

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

KEITH EDMUND GAVIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 4:16-cv-00273-KOB
	)	
JEFFERSON S. DUNN,	)	
Commissioner of the Alabama	)	
Department of Corrections,	)	
	)	
Respondent.	)	

**VOLUME 10**

**State Court – Trial Transcript**

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COURT OF CRIMINAL APPEALS NO.

CR-99-1127

CR-00-0133

## APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMACIRCUIT COURT NO. CC-98-61 & CC-98-62CIRCUIT JUDGE DAVID A. RAINSCC-98-61 JURY VERDICT / GUILTY OF CAPITAL MURDERType of Conviction / Order Appealed From: CC-98-62 JURY VERDICT / GUILTY OF ATTEMPTED MURDERSentence Imposed: CC-98-61 DEATH CC-98-62 LIFEDefendant Indigent: ☒ YES ☐ NOKEITH EDMUND GAVINStephen P. Bussman256-845-7900

NAME OF APPELLANT

(Appellant's Attorney)(Telephone No.)P. O. Box 680925(Address)Fort Payne,Alabama35967(City)(State)(Zip Code)

V.

STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

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1 day. I think the jury, in view of the rapidity  
2 with which this case has progressed and what I  
3 feel is the benefit that the jury would gain by  
4 getting a better appreciation, a less sterile  
5 appreciation, I just feel, and, again, it, you  
6 know, the State's only photograph is of a  
7 situation that it's not the way it was in March of  
8 1998.

9 THE COURT: I'll take it under consideration.

10 MR. SMITH: Thank you, judge.

11 THE COURT: Thank you.

12 (12:21 A.M. Recess)

13 (1:58 P.M. Jury present)

14 THE COURT: You may be seated. Thank you.  
15 Ladies and gentlemen, thanks for your patience  
16 this afternoon. We've been delayed a little, but  
17 I think we're ready the get started back. State  
18 ready with the next witness?

19 MR. O'DELL: Yes, sir.

20 THE COURT: All right.

21 MR. O'DELL: State would call Investigator  
22 Larry Wilson.

23 LARRY WILSON

24 Being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. O'DELL:

2 Q State your name, please, sir.

3 A My name is Larry Wilson.

4 Q Mr. Wilson, where do you reside?

5 A I reside in Cherokee County.

6 Q All right. And are you employed?

7 A Yes, sir.

8 Q In what capacity and for how long, please?

9 A I work with the Cherokee County Sheriff's  
10 Department for the last 11 years, and I'm chief  
11 deputy.

12 Q All right. Do you also serve as an investigator  
13 for this county?

14 A Yes, sir, I do.

15 Q And in that capacity I'll ask you if you've had an  
16 occasion to be involved in an investigation  
17 involving the death of William Clinton Clayton?

18 A Yes, sir, I did.

19 Q I believe the testimony has been that he was shot  
20 on March the 6th, 1998?

21 A Yes, sir.

22 Q If you would, tell these ladies and gentlemen how  
23 you got involved in that investigation and what  
24 procedures you utilized, please.

25 A I received a call from dispatch around 7, I think

1 it was 7:02, on the 6th.

2 Q 7:02?

3 A P.M.

4 Q Okay.

5 A And they told me there had been a shooting at the,  
6 between the bank and the courthouse, the Regions  
7 Bank and the courthouse, and that the subject had  
8 left in a van with writing on the side going  
9 towards Leesburg. And I, at that time I came out  
10 and started to Leesburg, and on the way to  
11 Leesburg before I got started out they called, I  
12 heard Danny, Investigator Danny Smith, call out  
13 that he was stopping the vehicle on 68.

14 Q All right, and did you as a result of that  
15 communication, did you go to that location?

16 A Yes, sir, I did.

17 Q And tell these ladies and gentlemen what, if  
18 anything, you did when you arrived there.

19 A When I arrived at the scene, they already had Mr.  
20 Clayton out of the van and into the ambulance. At  
21 that time I started taking pictures of the scene.

22 Q All right. And do you recall what photographs you  
23 began taking?

24 A Yes, sir.

25 Q Okay, let me ask you if can identify this

1 photograph?

2 A Yes, sir.

3 Q Do you know who took that photograph?

4 A Yes, sir, that was one of the pictures that I  
5 took.

6 Q You took that photograph. Okay, and what does  
7 that photograph purport to depict, please, sir?

8 A That's the interior of the van, front seat, and  
9 this is the passenger's seat, and this is the  
10 driver's seat, and there is blood on the passenger  
11 area.

12 MR. O'DELL: We need to stop and let that be  
13 marked.

14 Q You took this photograph?

15 A Yes.

16 Q And when did you take this photograph, please, sir?

17 A On the night of the 6th.

18 Q Was it -- obviously there is no one in the  
19 passenger's compartment of the van.

20 A No, sir.

21 Q So it was taken after Mr. Clayton had been  
22 removed?

23 A Yes, sir.

24 Q Does that reasonably and accurately depict the  
25 interior of the van on the night that you took

1 that picture?

2 A Yes, sir, it does.

3 MR. O'DELL: We would offer State's exhibit  
4 number 22.

5 MR. SMITH: No objection.

6 THE COURT: It's admitted.

7 (Whereupon, State's exhibit number 22  
8 admitted into evidence at this time)

9 Q Ask you to take a look at this photograph, please.

10 A Yes, sir, that's a picture of the Corporate  
11 Express van.

12 Q Do you know who took that picture?

13 A Yes, sir, that's one of the ones I took.

14 Q Okay. And do you recall when you took that?

15 A That was also the night of the 6th of March.

16 Q And is that, in fact, the Corporate Express van in  
17 which you had taken the interior photograph just  
18 previous?

19 A Yes, sir, it is.

20 MR. O'DELL: We would like to get this one  
21 marked, also, Judge.

22 Q Does that photograph reasonably and accurately  
23 depict the van as you saw it that night on Highway  
24 68 and 48?

25 A Yes, sir, it does.

1 MR. O'DELL: We offer State's exhibit 23.

2 MR. SMITH: No objection.

3 THE COURT: 23 is admitted.

4 (Whereupon, State's exhibit number 23  
5 admitted into evidence at this time)

6 Q Mr. Wilson, let me ask you to look at this  
7 photograph. Do you know who took this photograph?

8 A Yes, sir, I'm pretty sure I took that picture. It  
9 was either me or Doug Machleit, and I'm pretty  
10 sure I took it.

11 Q Were you present if -- you either took this  
12 photograph or someone else did. Were you present  
13 when this photograph was taken?

14 A Yes, sir, he would have been there with me.

15 Q Tell these ladies and gentlemen what this  
16 photograph depicts.

17 A This is a picture of the creek where the suspect  
18 was found.

19 Q Are you talking about the defendant, Keith Gavin?

20 A Yes, sir.

21 Q Do you know what part of the creek, do you know  
22 whether or not this was a picture of the area in  
23 which Mr. Gavin was taken from?

24 A Yes, sir, that's the area that he was in, in this  
25 area here. (Indicating)



1 Q What's the time frame for this? Do you know when  
2 that photograph was taken?

3 A That was taken the next day, on the 7th.

4 Q 7th of March, 1998?

5 A Yes, sir.

6 Q Does that photograph reasonably and accurately  
7 depict the creek on that occasion that you took  
8 it?

9 A Yes, sir, it does.

10 MR. O'DELL: We would like this one marked and  
11 we would offer it as well.

12 MR. SMITH: No objection.

13 THE COURT: 24 is admitted.

14 (Whereupon, State's exhibit number 24  
15 admitted into evidence at this time)

16 Q Investigator Wilson, you said you got out there  
17 some time after 7?

18 A I think I arrived on the scene at 7:22 P.M.

19 Q All right. And did you say that Mr. Clayton had  
20 already been removed from the van?

21 A Yes, sir, he had.

22 Q Okay. After you got there and you saw that the  
23 victim had been removed what, if anything, did you  
24 do or where did you go?

25 A Like I say, we started taking pictures of the

1 crime scene, and also we had the officers that was  
2 there to seal off the area.

3 Q Did you notice anything unusual about the van  
4 other than the blood?

5 A It also had a bullet hole in the passenger door.

6 Q All right. Did you request any assistance with  
7 respect to investigation personnel, particularly  
8 from the state lab?

9 A Yes, sir. We called the -- after we had the van  
10 pulled and took to the sheriff's department where  
11 it was locked up, and then we asked for forensic  
12 sciences to have somebody come and fingerprinted  
13 the van.

14 Q Okay. After you did that, did you continue to  
15 assist in the attempt to apprehend the suspect?

16 A Yes, sir, I did.

17 Q What else, if anything, did you do during the course  
18 of that night, Mr. Wilson?

19 A We went -- I went back to the scene and, like I  
20 say, we had the scene blocked off, all the  
21 officers surrounded the area where he was at. We  
22 looked for the subject there and at the time that  
23 we hadn't found him, and I got a call to go back  
24 to the office to meet with Val Courtney and talk  
25 with one of the witnesses.

1 Q All right. Did you have an occasion to receive or  
2 to find items of evidence involving this case  
3 during that day or the next day?

4 A Yes, sir. That night I found a spent .40 caliber  
5 hull in the roadway.

6 Q All right, let me see if I can locate the  
7 photograph. Ask you to look at State's exhibit 3,  
8 and using that laser pointer, if you would,  
9 demonstrate or point out for the ladies and  
10 gentlemen of the jury where you found that spent  
11 hull.

12 A It would have been right in this area here.  
13 (Indicating)

14 Q Okay. What did you do with that item of evidence,  
15 please, Mr. Wilson?

16 A I bagged the evidence up and kept it in my locker  
17 until I carried it to the Department of Forensic  
18 Sciences at Birmingham.

19 Q Who at the Department of Forensic Sciences did you  
20 turn that over to, please?

21 A I turned it over to David Higgins.

22 Q Okay. I believe you said you came back to the  
23 courthouse and met with Chief Val Courtney?

24 A Yes, sir, I did.

25 Q Did you receive any items of evidence from the

1 Chief?

2 A Yes, sir, I received two spent .40 caliber shells  
3 or hulls.

4 Q Okay. And let me back up just one second. When  
5 you gave the .40 caliber spent hull that you found  
6 on Highway 68 to David Higgins, was it in the same  
7 or substantially the same condition as it was when  
8 you found it?

9 A Yes, sir, it was.

10 Q Okay. And you received two spent hulls from Val  
11 Courtney, and those were given to you by him?

12 A Yes, sir, they were.

13 Q And what did you do with them, please?

14 A I took those and put them in evidence and also  
15 took those to the lab in Birmingham and turned  
16 them over to David Higgins.

17 Q Okay. And when you turned those two spent hulls  
18 over to Mr. Higgins, were they in the same or  
19 substantially the same condition as when you  
20 received them from Val Courtney?

21 A Yes, sir, they were.

22 Q Okay. I'll ask you if you also received an item  
23 from Deputy DeBerry?

24 A Yes, sir. On March the 7th, the morning of March  
25 7, Jimmy DeBerry brought me a toboggan that he had

1 found.

2 Q All right. And what did you do with that  
3 toboggan, please, sir?

4 A That was also bagged and kept in my locker until I  
5 took it to the lab, and at the lab I took it and  
6 put it in serology locker at the lab.

7 Q Did you subsequently receive that back from the  
8 lab?

9 A Yes, sir, I received it back by UPS from Angelo  
10 Della Manna.

11 Q And did you then subsequently turn it back over to  
12 one of your officers?

13 A Yes, sir. Well, at that time I kept it in my  
14 locker until later, and then it was turned back  
15 offer to Jimmy DeBerry.

16 Q Okay. All right. Let me ask you about the  
17 clothing that Mr. Gavin was in on the night he was  
18 arrested. Do you know what happened to that,  
19 please?

20 A Yes, sir. The night he was arrested, they brought  
21 him to the jail. Of course, his clothes was wet,  
22 they had him to change clothes. The clothes were  
23 taken by me and kept in my possession, and also I  
24 searched the clothes at that time and found a key  
25 inside the clothes.

1 Q Okay. Let me drop back for just one second. I  
2 believe you said you got the toboggan by way of  
3 UPS?

4 A Yes, sir.

5 Q Do you have the package that that came in?

6 A This is the box here.

7 Q Was the package that you received it in from UPS,  
8 would you describe how it was fixed up.

9 A It was sealed and taped in, basically in the, what  
10 it's in now. It was in a box, and I opened it up  
11 when I got it back to see what was in it.

12 Q Okay. Do you have the clothing — You took the  
13 clothing, you received the clothing at the jail?

14 A At the jail.

15 Q And you were present when it was removed?

16 A Yes, sir, I was.

17 Q And you did what with it, please, sir?

18 A I took the clothing and kept it in my locker. Of  
19 course, we had to dry the clothes because they  
20 were wet before we could put them in a bag.

21 Q Okay.

22 A I kept them locked up in the locker and we bagged  
23 them and took them to the lab.

24 Q Okay. And when you took them to the lab, what did  
25 you do with them, please?

1 A I took them and turned them over to -- those also  
2 were locked up in serology locker.

3 Q Serology locker?

4 A Yes, sir.

5 Q And when you put them in the serology or they were  
6 placed in the serology locker, were they still  
7 sealed as you had sealed them up?

8 A Yes, sir, they were.

9 Q Were they in the same or substantially the same  
10 condition as they were when you received them at  
11 the jail?

12 A Yes, sir.

13 Q Are those still at the lab or did you receive them  
14 back from the lab?

15 A No, sir, I received those back.

16 Q All right, and from whom did you receive those?

17 A I received those from UPS.

18 Q Again, was it in the same package as you received  
19 the toboggan?

20 A Yes, sir.

21 Q And I believe you said the package was sealed and  
22 secured and you received it that way?

23 A Yes, sir.

24 Q Would you please -- excuse me just one second.

25 Just in case I failed to ask this, was the

1 toboggan in the same or substantially the same  
2 condition when you received it back as when you  
3 sent it to the lab?

4 A Yes, sir, it was.

5 Q And you sent it to the lab in the same or  
6 substantially the same condition as when you  
7 received it from DeBerry?

8 A Yes, sir.

9 Q Would you produce the clothing for us today,  
10 please. One other question while you're doing  
11 that. When you gave the toboggan back to Deputy  
12 DeBerry, was it in the same or substantially the  
13 same condition as it was when you received it?

14 A Yes, sir, it was.

15 Q Okay. What items did you receive?

16 A I got back a pair of long johns, a T-shirt, white,  
17 and a pair of undershorts and some socks, and a  
18 blue headband in this bag.

19 Q Okay. Was there a separate bag?

20 A Yes, sir.

21 Q And are those items the same items that you  
22 received from him at the jail?

23 A Yes, sir, they are.

24 Q You can put them back in the bag, I'm sorry.

25 MR. O'DELL: I think we need to have that bag



1 marked.

2 Q When you were taking that out, did I see a pair of  
3 long johns in that bag?

4 A Yes, sir.

5 Q All right, if you would, get out the other bag,  
6 please. I've asked you to open up the second bag  
7 that came in, that UPS package, and what does this  
8 bag contain, please, sir?

9 A This bag contains a pair of black shoes and a  
10 Levis blue jeans.

11 Q Okay. Why don't we go ahead and take that out  
12 just briefly so we can see the contents. And you  
13 have opened the package that this contains a pair  
14 of denim jeans and shoes; is that correct?

15 A Yes, sir.

16 Q If you would, pack that back up and we'll get  
17 that marked. Investigator Wilson, did you receive  
18 a third package of clothing from the lab in that  
19 same UPS package?

20 A Yes, sir.

21 Q All right. If you would, open that up and check  
22 the contents. And what does this package purport  
23 to be?

24 A Extra long type short sleeve shirt, a large pink  
25 with flowers long sleeve shirt, and I think it is

1 a Cherokee brand.

2 Q All right. If you would, open that white bag just  
3 to confirm its contents. You have the pink  
4 shirt?

5 A Yes, sir.

6 Q And what's below it there? Okay, you can wrap it  
7 back up, please, and then we need to have it  
8 marked. Mr. Wilson, were there any other items  
9 other than those three clothing bags and the  
10 toboggan, was there anything else contained in the  
11 UPS bag that you received from the lab?

12 A No, sir. And this bag here, it ~~was~~ not sent to  
13 the lab. This one was one I had in my possession  
14 the whole time.

15 Q Which bag is that?

16 A This is the pair of long johns and the T-shirt and  
17 the pair of undershorts and the socks.

18 Q So that never went to the lab?

19 A No, sir, it did not. When they sent the stuff  
20 back from the lab, I put all of it together in the  
21 one box.

22 Q Okay. Is that in the same or substantially the  
23 same condition as it was the night you received it  
24 from Mr. Gavin?

25 A Yes, sir, it is.

1 MR. O'DELL: Okay. Let's get that one marked  
2 separately, then.

3 THE COURT: That's already been marked. That  
4 was 25, wasn't it?

5 MR. O'DELL: We would move to offer exhibit  
6 number 25.

7 MR. SMITH: No objection.

8 THE COURT: All right, 25 is admitted.

9 (Whereupon, State's exhibit number 25  
10 admitted into evidence at this time)

11 THE COURT: Let me make sure that you clarify  
12 something.

13 MR. O'DELL: Okay.

14 THE COURT: I believe the question was whether  
15 he received three bags back from the lab, and he's  
16 testified about exhibits 25, 26, and 27. Now it  
17 appears that 25 was not sent to the lab.

18 MR. O'DELL: That's correct.

19 A No, sir, it was not.

20 THE COURT: Were three bags received back from  
21 the lab?

22 A Two bags.

23 THE COURT: Two bags. Okay, thank you.

24 Q Mr. Wilson, you had an occasion to go, you said  
25 you were out at the scene. Did you have -- did

1           you make an attempt or have any occasion to look  
2           for evidence at the scene where Mr. Gavin was  
3           retrieved from the woods?

4           A       Yes, sir, we looked for a weapon there at the  
5           scene. At that time, that night and also the next  
6           day, and we were unable to find a weapon until the  
7           13th of March.

8           Q       Did you leave the state at any time during that  
9           week?

10          A       Yes, sir, we left the state on March the 8th and  
11          then didn't arrive back until late on March the  
12          10th.

13          Q       And where did you go on that occasion?

14          A       We went to Illinois.

15          Q       Okay. Did you subsequently find an item of  
16          evidence on March the 13th?

17          A       Yes, sir, we did. We found a .40 caliber Glock.

18          Q       Okay. Let me ask you if you would, please, to  
19          turn around and using the laser pointer  
20          demonstrate or point out to the ladies and  
21          gentlemen where you found that Glock.

22          A       It would be, I think it was right in this area  
23          here. (Indicating) This is a ditch that runs  
24          this way, and a little opening right in here.  
25          (Indicating)

1 Q Okay. You found the Glock in this area here?  
2 (Indicating)

3 A It may have been further down. There is an  
4 opening right in these woods, right in here, and  
5 there was a trail that they went down in and it  
6 was about, I guess, about 30 feet off the -- from  
7 the main road into the woods.

8 Q Okay. What did you do with that pistol, please  
9 sir? That Glock.

10 A We took it, bagged it up, and took it to the lab  
11 in Birmingham and I turned it over to David  
12 Higgins.

13 Q Okay. I believe you said that when Mr. Gavin was  
14 transported to the sheriff's department and you  
15 received those items of clothing that you sent to  
16 the lab, that you also found another item in the  
17 clothing?

18 A Yes, sir, found a key to a motel room.

19 Q Okay, do you have that with you at this time?

20 A Yes, sir, I do.

21 Q While you're looking for that, let me ask you a  
22 follow-up question on the Glock. When you took  
23 that Glock to the lab and turned it over to David  
24 Higgins, was it in the same or substantially the  
25 same condition as it was when you found it at the

1 scene?

2 A Yes, sir, it was.

3 Q Okay. Would you identify that for the jury.

4 A This is the key that I found in his pocket. It's  
5 got number 47 wrote on it.

6 Q Did this come from the jeans pocket of the  
7 defendant?

8 A Yes, sir, it did.

9 Q During the course of your investigation over the  
10 hours of March the 6th and March the 7th, did you  
11 ever receive any information from anybody  
12 concerning the events that transpired in Cherokee  
13 County from out of state?

14 A Yes, sir, I received a call at home from dispatch  
15 that said that there was an officer from Joliet,  
16 Illinois, by the name of Tom Arambisich that  
17 called and said he had information about the  
18 shooting.

19 Q All right, and were you given information about  
20 that from him?

21 A Yes, sir, I called Mr. Arambisich and talked with  
22 him and he at that time told me that --

23 MR. SMITH: Objection, hearsay.

24 THE COURT: Sustained.

25 Q Without telling us what Mr. Arambisich did, was it

1 because of that phone call that you left the state  
2 and went to Illinois?

3 A Yes, sir, it was.

4 Q And in the course of your trip to Illinois, did  
5 you have occasion to interview anybody?

6 A Yes, sir, when we arrived at the Illinois we  
7 interviewed Dewayne Meeks.

8 Q And pursuant to that interview, did you receive  
9 information concerning a motel in Chattanooga?

10 A Yes, sir, he advised us that he had --

11 MR. SMITH: Same objection. Hearsay.

12 THE COURT: Just answer the question. The  
13 answer was yes.

14 MR. O'DELL: Larry, I'm sorry, I tried to stop  
15 you before you started telling us.

16 A Yes, sir.

17 Q Pursuit to the information concerning the motel,  
18 did you, in fact, take that key to some location?

19 A Yes, sir, to the Super 8 Motel in Chattanooga,  
20 Tennessee.

21 Q All right. And when you got there, did you  
22 request -- did you ask them about the key?

23 A Yes, sir, I asked them if the --

24 Q Go ahead and tell me what you asked them, but  
25 don't tell me what they told you.

1 A Okay. I asked them if this key was a key to one  
2 of their rooms.

3 Q And as a result of their response did you, in  
4 fact, try that key in a motel room at the Super 8?

5 A Yes, sir.

6 Q And what room was that, please?

7 A It fit room 113.

8 Q So the key did fit room 113 at the Super 8 in  
9 Chattanooga?

10 A Yes, sir.

11 MR. O'DELL: We would offer that key at this  
12 time, Judge, State's exhibit -- .

13 MR. SMITH: We ask to voir dire, Judge.

14 THE COURT: Yes, sir.

15 VOIR DIRE EXAMINATION

16 BY MR. SMITH:

17 Q How many other rooms did you try that key in, Mr.  
18 Wilson?

19 A Just that one.

20 Q That's a Super 8 Motel?

21 A Yes, sir.

22 Q Do you know how many Super 8 motels there are in  
23 the country?

24 A Yes, sir.

25 Q How many?



1 A There is several.

2 Q More than five?

3 A I would imagine quite more than five, yes, sir.

4 Q Obviously, you didn't try that key in any of those  
5 other motel rooms?

6 A No, sir, I did not.

7 MR. SMITH: Judge, we're going to object on  
8 relevance. I'm not sure that it's been shown that  
9 merely because that key may have fit one room at  
10 one Super 8 Motel, that it has any relevance at  
11 all to this investigation.

12 THE COURT: Overruled.

13 DIRECT EXAMINATION RESUMED

14 BY MR. O'DELL:

15 Q Mr. Wilson, one more question concerning the key.  
16 Did you attempt to use that key on 113 based on  
17 the information you received?

18 A Yes, sir, I did.

19 THE COURT: Number 28 is admitted.

20 (State's exhibit number 28 admitted  
21 into evidence at this time)

22 Q I believe you said you had left the location and  
23 gone back to the office to meet Val Courtney and  
24 you received some items of evidence?

25 A Yes.

1 Q Did you have occasion to go back to the scene  
2 where Mr. Gavin was apprehended?

3 A No, sir, they had apprehended him before I came  
4 back.

5 Q All right. And then he was brought -- Do you know  
6 who transported him or who brought him to the  
7 sheriff's office?

8 A I think it was Camp Reese and Kevin Ware and  
9 another officer.

10 Q Did you have an occasion to -- just one second. I  
11 withdraw that question.

12 MR. O'DELL: I believe that's all. Thank you,  
13 Mr. Wilson.

14 THE COURT: Before you begin your questions,  
15 let me make sure I understand 26 and 27 have not  
16 been offered; is that correct?

17 MR. O'DELL: That's correct.

18 THE COURT: Okay, thank you.

19 CROSS EXAMINATION

20 BY MR. UFFORD:

21 Q Mr. Wilson, you have a picture up there. I can't  
22 remember, but I'll look at the number there, it's  
23 State's exhibit number 3?

24 A Uh-huh.

25 Q You said earlier that you went to this scene; is

1           that correct?

2           A       Yes, sir.

3           Q       And you went to the scene on the evening of March  
4                   the 6th; is that correct?

5           A       Yes, sir, I did.

6           Q       All right. Do you know the number of this road  
7                   that's running all the way to the bottom of the  
8                   page there, out of the bottom of the page there  
9                   around the bottom of the picture there?

10           THE COURT: Where is the pointer?

11           MR. O'DELL: Oh, sorry.

12           MR. UFFORD: Thank you.

13           Q       Do you know the number of that road right there?  
14                   (Indicating)

15           A       I'm not for sure about the number of that one. I  
16                   know 68 is the one that runs out at the main  
17                   highway.

18           Q       68?

19           A       I mean 48 is the one that runs into 68.

20           Q       Is this 48 right here or is this 48? (Indicating)

21           A       No, sir. The main road, this one is 48.

22           Q       But these roads merge right here; is that correct?

23           A       Yes, sir, they do.

24           Q       In the course of your investigation, did you  
25                   travel this road?

1 A Yes, sir, I'm sure we did.

2 Q Did you travel this road?

3 A Yes, sir.

4 Q How many times did you travel that road?

5 A I'm sure I went up it probably two or three times  
6 at least, if not more.

7 Q Would it be consistent with your memory of your  
8 trips down that road during your investigation to  
9 say that that road is a narrow road?

10 A Yes, sir, it is a narrow road.

11 Q And is that road a road that curves around behind  
12 this area of woods here? (Indicating)

13 A Yes, sir, it curves and comes back out on another  
14 main road, yes, sir.

15 Q Okay. And before you get to that curve, do you  
16 recall a very significant dip in the road?

17 A Significant dip?

18 Q Right. The road dips down. Would it be that it  
19 dips down and goes back up and curves back around?

20 A It goes up a hill, yes, sir.

21 Q Do you recall the dip?

22 A Yes, sir, I think there is a dip that when you  
23 start up the hill, yes, sir.

24 Q Okay. After you go up this road away, do you  
25 recall -- it looks like here there are woods, but

1 do you recall if there are woods on this, I guess  
2 that would be the east side of the road going  
3 towards Leesburg?

4 A Yes, sir.

5 Q Are there woods on that side of the road?

6 A There is some woods on that side and then there is  
7 sort of off to the, up the other, 48 there, is  
8 also a building.

9 Q Well, I'm talking about on this road right here.

10 A Yes, sir. Now, there is woods up almost all the  
11 way up through it.

12 Q On both sides of the road; is that correct?

13 A Yes, sir.

14 Q Okay. This road also goes all the way around,  
15 doesn't it?

16 A Yes, sir.

17 Q And comes back around behind and I believe goes  
18 into state Highway 176; is that correct?

19 A I believe that's right, yes, sir.

20 Q Okay. Now, could you tell me -- well, have you  
21 gone down in the course of your investigation  
22 state Highway 176?

23 A Oh, yes, sir.

24 Q Okay. And 176 comes right back to Highway 68.

25 A Yes, sir.

1 Q Could you tell me if there are woods on both sides  
2 of that road? I'm going to try to clarify.  
3 Obviously, there is woods in the tringle.

4 A Yeah, there is woods all the way this way until  
5 you get to the one, to the road here that comes  
6 back off 68. There is also some woods on this  
7 side. (Indicating)

8 Q I'm just trying to make clear that there are woods  
9 on both sides of that road, also. Do you  
10 understand what I'm saying? Just like there are?

11 A Yes, sir. Yes, sir.

12 Q Okay. You testified regarding some clothing that  
13 you say you got from the defendant and you  
14 testified that you sent part of those clothing,  
15 that clothing to the lab?

16 A Yes, sir.

17 Q But you didn't send all of that clothing to the  
18 lab?

19 A No, sir.

20 Q How long have you been working as an investigator,  
21 Mr. Wilson?

22 A Several years, probably 10 or 11 or more.

23 Q And how long have you been Chief Deputy?

24 A I've been Chief Deputy going on five years.

25 Q And have you ever investigated a murder before?

1 A Yes, sir.

2 Q Have you ever investigated a murder regarding a  
3 gunshot at close range?

4 A Yes, sir.

5 Q Do you understand that the blood evidence in a  
6 case like that, from your experience as an  
7 investigator, is very important?

8 A Yes, sir.

9 Q Then why did you fail to send some of the alleged  
10 or some of the suspect's clothing to the lab?

11 A The lab, I think, advised Investigator Smith that  
12 they wanted the outer clothes. .

13 Q Okay, but you're saying that you took the lab's  
14 advice?

15 A Yes, sir.

16 Q Do you take it because you're saying I don't want  
17 to know what someone else said, why weren't you as  
18 the chief investigating -- Were you the chief  
19 investigator?

20 A I was in charge, yes, sir.

21 Q Okay. So why did you not send it to the lab?

22 A Like I say, the lab said they wanted the outer  
23 clothes, not the inner clothes.

24 Q Well, in your investigating experience, has it  
25 occurred to you that blood, being a liquid, would

1                   soak through to inner clothing?

2           A       Yes, sir.

3           Q       But you chose not to send it?

4           A       No, sir, I sent the outer clothes, yes, sir.

5           Q       Were you at the location, this location here that  
6                   is in the State's exhibit 3 here?

7           A       Yes, sir.

8           Q       The entire time during the search?

9           A       No, sir. Like I say, I had to go back to the  
10                  office to meet with Val Courtney, Chief Val  
11                  Courtney, and also I interviewed, talked to some  
12                  other witnesses.

13          Q       Did you order that the suspect be shown to Danny  
14                  Smith at the service station?

15          A       No, sir, I did not.

16          Q       Okay. When did you call off the search?

17          A       When did we call off the search?

18          Q       Well, you're the chief investigator, you were in  
19                  charge, you said. When did you call off the  
20                  search?

21          A       After the suspect, he was apprehended, we called  
22                  off the search then for that, for the subject in  
23                  the woods, yes, sir.

24          Q       Well, maybe you don't -- Did you have the  
25                  authority to call off the search?



1 A Yes, sir.

2 Q So who called off the search?

3 A I guess I did.

4 Q So...

5 A But we also went back to the scene, like I say, to  
6 look for the pistol.

7 Q But when you called off the search, it was because  
8 you said you had the suspect; is that what you  
9 said?

10 A Yes, sir.

11 Q Okay. Did you cordon off the area where the  
12 suspect was found?

13 A No, sir, we did not.

14 Q Isn't that standard procedure?

15 A Well, it was pouring down rain that night and he  
16 was -- we, like I said, we looked for the gun, we  
17 went back and looked for the gun before everybody  
18 left from the scene.

19 Q But you didn't answer my question.

20 A Yes, sir, I guess it would be standard, yes, sir.

21 Q Okay. I don't want to shoot anybody with this.  
22 Maybe I'd better lay it down. I pushed the button  
23 on the laser pointer. Earlier you showed a  
24 picture of the creek. What time of day was that  
25 picture taken?

1 A I believe it was taken in the morning.

2 Q Early morning? Mid-morning? Late morning?

3 A Probably mid-morning.

4 Q In the course of your investigation I believe you  
5 already testified, or if you haven't I'll ask, did  
6 you travel to Chicago, Illinois?

7 A Yes, sir, we did.

8 Q Okay. And when was the first time you went to  
9 Chicago, Illinois?

10 A On March the 8th, I believe is when we went.

11 Q And why did you go there?

12 A We went there to talk with Dewayne Meeks.

13 Q Okay. Did you receive the assistance of the  
14 police in Illinois in that investigation?

15 A Yes, sir, we did.

16 Q And who would that have been?

17 A Tom Arambisich I believe is the way you pronounce  
18 it.

19 Q Now, were you aware that Tom Arambisich was a  
20 friend of Dewayne Meeks?

21 A He said he knew him and had knowed him for  
22 awhile, yes, sir.

23 Q Not friends, just known him?

24 A Well, they could have been friends, but he said he  
25 had knowed him for quite some time, yes, sir.

1 Q Okay. Did anyone go with you from Cherokee  
2 County?

3 A Yes, sir.

4 Q And who was that?

5 A Investigator Danny Smith.

6 Q Okay. When you first interviewed Mr. Meeks, did  
7 you get a -- before you interviewed him, did you  
8 get a summary of his previous statement to Mr.  
9 Arambisich?

10 A Nothing other than what was told to me over the  
11 phone.

12 Q I'm going to show you something that was given to  
13 me, given to the defense, by the District  
14 Attorney's office. It may have a little  
15 highlighter or something on it, but basically it  
16 is something that was provided as part of your  
17 reports, evidence in your investigation. And tell  
18 me if you recognize that report.

19 A Yes, sir, I do.

20 Q Okay, is that a report from Mr. Arambisich to you?

21 A Yes, sir, it is.

22 Q Okay. And have you read this report?

23 A Yes, sir.

24 Q Okay, and that was in the course of your  
25 investigation that you read that report?

1 A Yes, sir.

2 Q Okay. Now, the very last point, and I call it a  
3 point because he has dots beside his items here,  
4 excuse me, he has dots beside certain items here,  
5 and the very last item in his report right before  
6 it says end of report regarding Mr. Meeks, it says  
7 he also advised me that a friend of his was one of  
8 the responding officers and that Mr. Gavin had  
9 shot at him while trying to get away. Now, is  
10 that what it says?

11 A That's what it says, yes, sir.

12 Q Okay. Now, in your course -- in the course of you  
13 interviewing Mr. Meeks, did you ask who that  
14 friend was?

15 A No, sir.

16 Q You didn't ask anything about this remark?

17 A No, sir.

18 Q You didn't ask anything about this remark?

19 A No, sir. The only thing we -- I don't think we  
20 asked about it.

21 Q Well, Danny Smith was there.

22 A Yes, sir.

23 Q Okay. There was nothing asked regarding that  
24 remark?

25 A No, sir.

1 Q Was that first interview with Mr. Meeks taped?

2 A Yes, sir, it was.

3 Q Okay. And do you have the tape recording?

4 A I have a blank tape.

5 Q It didn't tape; is that right?

6 A No, sir, it did not.

7 Q Did you do a summary of that first investigation,  
8 that first interview, excuse me?

9 A Yes, sir, we did.

10 Q And did you subsequently go back and interview Mr.  
11 Meeks again?

12 A Yes, sir, on April the 6th, I believe.

13 Q Okay. And the first interview was when?

14 A On March 6 -- on March the 9th would have been  
15 when.

16 Q I'm going to show you another investigative report  
17 from the items regarding your investigation that  
18 was supplied to me by the District Attorney's  
19 office. Again, it's got a little bit of  
20 highlighting and maybe a few penciled notes on it,  
21 but it's all readable. I'm going to ask you if  
22 this is your summary that you did of the taped  
23 interview, that the tape didn't tape with.

24 A Yes, sir.

25 Q Okay. Now, again, at the end, conveniently for me

1 and conveniently for the record, the end of that,  
2 at least the end of the last, of the third page of  
3 that statement that was in your investigative  
4 report it states in the last sentence regarding  
5 Mr. Meeks, or the last two sentences, Dewayne said  
6 the gun that Keith had was his gun. He said he  
7 had come back and reported it stolen is one more  
8 sentence. He said he didn't know when Keith took  
9 the gun out of his Blazer, at the motel or if he  
10 got it out of his house. And it says took the gun  
11 out of his Blazer; is that correct?

12 A Out of his Blazer or at the house, yes, sir.

13 Q Yes, okay.

14 THE COURT: May I ask you to question the  
15 witness from this side over here. If you are  
16 going to continue to question him about documents  
17 there at the stand, if you will do it from over  
18 here it won't block the jury.

19 MR. UFFORD: Okay, I'm sorry.

20 Q Did you question Mr. Meeks regarding that  
21 statement about the gun being in his Blazer?

22 A We asked him about the gun, yes, sir.

23 Q Being in his Blazer?

24 A Whether it was in his Blazer or whether it was in  
25 his house, yes, sir.

1 Q But subsequently when you questioned him on, was  
2 it April the 6th you said?

3 A Yes, sir.

4 Q Did you specifically ask him about this issue?

5 A Yes, sir, I'm sure we asked him about it, yes,  
6 sir.

7 Q You're sure or you recall?

8 A I'm sure we asked him about it, yes, sir. I can't  
9 say I recall, but I'm sure we asked him about it,  
10 yes, sir.

11 Q Now, what I just showed you was the statement of  
12 Dewayne Meeks from March the 9th, 1998?

13 A Yes, sir.

14 Q Now --

15 MR. O'DELL: Your Honor, could I interject  
16 here for just one minute. We have not objected,  
17 despite the fact that Mr. Ufford has continued to  
18 cross-examine Mr. Wilson on someone else's  
19 statement. And if he wants to introduce the  
20 statement, we would be more than glad for him to  
21 do that and then have the jury read the entire  
22 statement. But we're going to object to him  
23 continuing to just pick and choose pieces out of  
24 this. In fact, we would not object having all the  
25 statements obtained from Mr. Meeks or Investigator

1 Arambisich introduced as well.

2 THE COURT: I'm going to allow Mr. Ufford to  
3 continue examining the witness from this document  
4 if he wishes to do so without introducing the  
5 entire.

6 Q Mr. Wilson, you said that you're sure that you did  
7 question him, but you don't recall. So on a page  
8 of this report where it says what I just told you,  
9 what I just read, that he said he didn't know when  
10 Keith took the gun out of the Blazer. I show you  
11 a document where it was signed by Dewayne Meeks.

12 A Uh-huh. It also says out of the Blazer at the  
13 motel or out of his house.

14 Q Right, it does say that.

15 A Yes.

16 Q But you had him specifically sign it on the 6th of  
17 April, 1998; is that correct?

18 A Yes, sir, we did.

19 Q Did you investigate or examine Mr. Meeks' Blazer?

20 A We took pictures of the Blazer, yes, sir.

21 Q How many pictures?

22 A Two or three, I'm sure.

23 Q Who took the pictures?

24 A I believe I took the pictures.

25 Q Okay. Did you take pictures of the inside of the



1 Blazer?

2 A No, sir, we took pictures of the outside.

3 Q Okay. Did you examine the Blazer other than to  
4 take pictures?

5 A No, sir.

6 Q Now, you knew from the statement that that Blazer  
7 right out here at the corner, or you had good  
8 reason to believe it was, real good reason to  
9 believe that it was out there at the corner when  
10 Mr. Clayton was shot; is that correct?

11 A Yes, sir.

12 Q And you also knew that there was a real good  
13 possibility that that vehicle was the vehicle from  
14 which the assailant exited to do the shooting; is  
15 that correct?

16 A Yes, sir.

17 Q Did you impound the Blazer?

18 A No, sir, I did not.

19 Q You didn't examine the interior in any way?

20 A No, sir, I did not.

21 Q Would it be reasonable to think that in  
22 investigating a murder with these facts, that the  
23 interior of the vehicle in that position, that was  
24 that vehicle, the one that was there when it  
25 happened, that the assailant exited from, at least

1 was it definitely involved, would it be reasonable  
2 to say that that should have been examined?

3 A There was no reason to examine it because he  
4 didn't get back in that vehicle.

5 Q But you haven't -- had you already determined the  
6 facts?

7 A Witnesses said that he exited, and the evidence  
8 shows that he did not get back in that vehicle.

9 Q I understand. But we're here today to determine  
10 the facts of the case. Are you saying that you  
11 had already determined the facts of the case on  
12 that day?

13 A No, sir, I was just going by what the witnesses  
14 said.

15 Q Well, in your experience as an investigator, do  
16 you find that the rendition of what happened of  
17 every witness to every act, if it's the same act,  
18 you've got three different witnesses or five, are  
19 they all going to be the same?

20 A Not necessarily, no, sir.

21 Q Well, are they?

22 A No, sir, they're probably not going to tell you  
23 the same thing.

24 Q Okay. So you didn't know what happened yet, did  
25 you?

1 A From the evidence and from the people that we  
2 talked to, we had no reason to believe the subject  
3 got back in that vehicle.

4 Q So you decided to give up the investigation; is  
5 that correct?

6 A No, sir, we didn't give up the investigation.

7 Q You gave up the investigation of Mr. Meeks; is  
8 that correct?

9 A No. We interviewed Mr. Meeks and we brought the  
10 evidence that we had back, presented it to the  
11 Grand Jury.

12 Q Didn't have a lot of evidence, did you?

13 A Yes, sir, I felt like we had a pretty good bit of  
14 evidence.

15 Q Well, did you question Mr. Meeks' wife?

16 A No, sir, we did not.

17 Q Wasn't she there? Wasn't she pretty close?

18 A She was not with them.

19 Q Wasn't she involved, at least indirectly, in this?  
20 I mean, she came from Chicago to Chattanooga in  
21 the middle of the night. I mean, wasn't there a  
22 reason to ask her something?

23 A No, sir, I didn't see no need in asking her  
24 because she wasn't with them.

25 Q Well, isn't motive an issue? Do you know what I'm

1 talking about?

2 A Yes, sir, I know what you're talking about, yes,  
3 sir.

4 Q I mean, your investigation doesn't center on one  
5 little spot, does it?

6 A No, sir.

7 Q You've been an investigator for a long time. You  
8 know that.

9 A Yes, sir. Yes, sir.

10 Q So, weren't there some obvious questions for Mrs.  
11 Meeks?

12 A Well, we didn't feel like she would know anything  
13 about the shooting.

14 Q What about why?

15 A I don't know that she would have knowed why.

16 Q Well, did you get -- did you ask Mr. Meeks when  
17 you went there on the 9th what clothing he was  
18 wearing?

19 A No, sir, we did not.

20 Q Didn't ask him what clothing he was wearing?

21 A No, sir.

22 Q Didn't gather any clothing that he was wearing?

23 A No, sir, we sure didn't.

24 Q Did you let the fact that the police that assisted  
25 you were acquaintances for a long time of Mr.

1 Meeks have anything to do with your decisions not  
2 to pursue it any more than that?

3 A No, sir, I did not.

4 Q Was Mr. Meeks subsequently arrested for the murder  
5 of Mr. Clayton?

6 A He was indicted, yes, sir.

7 Q He was arrested and he was indicted first; is that  
8 right?

9 A Yes, sir.

10 Q Then he was arrested?

11 A Yes, sir.

12 Q You start investigating him again?

13 A No, sir. The evidence that we had, we presented  
14 to the Grand Jury and they indicted. Also  
15 indicted him.

16 Q Well, did you start investigating him again?

17 A No, sir.

18 Q Well, if the Grand Jury thought there was a  
19 question, why didn't you think there was a  
20 question?

21 A He was arrested and charged, then, like I say, we  
22 presented everything we had to the Grand Jury.

23 Q So you gave up on Mr. Meeks' investigation,  
24 correct?

25 A I wouldn't say gave up. We presented everything

1 we had.

2 Q Well, an investigation doesn't have to end, does  
3 it?

4 A No, sir.

5 Q Okay. And an investigation could be resumed,  
6 can't it?

7 A Yes, sir, it can.

8 Q Did you inventory every item in the Corporate  
9 Express van?

10 A Yes, sir, we took the items out of it and I put it  
11 in my office.

12 Q You inventoried every item?

13 A Yes, sir.

14 Q There was a lot of items, weren't there?

15 A Yes, sir, there was.

16 Q You were very thorough; is that correct?

17 A Like I say, we inventoried everything in there, in  
18 the van, that we saw.

19 Q Every piece of paper; is that correct?

20 A No, sir, we did not inventory each piece of paper.  
21 We inventoried the bags.

22 Q Each bag?

23 A The bags that were in the van.

24 Q Any pieces of paper?

25 A There may have been some paper in there, also.

1 Q Did you inventory them?

2 A Yes, sir, we would have inventoried them if they  
3 were individual.

4 Q Okay. Did you say that you took the pictures of  
5 the van, of the Corporate van?

6 A Yes, sir, the one at the scene, yes, sir.

7 Q Okay. And you took pictures of the inside of the  
8 van; is that correct?

9 A I think I took the pictures of the inside, it was  
10 either me, or Dean Buttram may have took -- no, I  
11 took the ones on the inside, he took the pictures  
12 of the evidence that we took out of it when it was  
13 released back to the victim.

14 Q So the picture that we saw earlier, you didn't  
15 take that picture?

16 A Which?

17 Q You didn't see it earlier, that's okay.

18 THE COURT: Do you need a minute to talk to  
19 him?

20 MR. UFFORD: Yes, sir.

21 THE COURT: Could we get a little air  
22 conditioning in here, please. I know it's hard to  
23 hear sometimes, but it's gotten so stuffy in here  
24 that maybe we can cool it down a little bit. Do  
25 we need to stop for a bathroom break? We're all

1 among friends.

2 MR. UFFORD: May I resume?

3 THE COURT: Yes, sir.

4 Q Mr. Wilson, do you know where Keith, I'm sorry,  
5 where Dewayne Meeks', where Dewayne Meeks' Blazer  
6 is now?

7 A No, sir, I don't.

8 Q Do you know if it's available if somebody wanted  
9 to investigate it or examine it?

10 A I suppose he still has the vehicle, yes, sir.

11 Q Do you know?

12 A I don't know that he has the vehicle, no, sir. I  
13 have not saw the vehicle.

14 Q That's been years ago. I mean, well, a year and a  
15 half ago when you took the picture, right?

16 A Yes, sir.

17 Q So you don't know anything from then, do you?

18 A No, sir, I don't.

19 Q Do you know -- You said that when you went to  
20 Chicago that Investigator Danny Smith went with  
21 you?

22 A Yes, sir.

23 Q Anybody else go with you?

24 A Yes, sir.

25 Q Who was that?



1 A Tony Burch I think is what his name is, officer  
2 from Fort Payne.

3 Q Fort Payne. Fort Payne what?

4 A P.D.

5 Q Fort Payne P.D. That would be the police  
6 department. Do you know if he's a friend of Mr.  
7 Meeks?

8 A I think he is, yes, sir.

9 Q So you went up there with a friend of Mr. Meeks to  
10 talk to a police officer with Mr. Meeks who was a  
11 long time acquaintance of Mr. Meeks?

12 A Yes, sir.

13 Q How long does it take to get up there?

14 A A good eight hours, maybe a little longer. It  
15 just depends.

16 Q I know, it depends, doesn't it? All right. Were  
17 you present when Mr. Gavin was taken into custody?

18 A No, sir.

19 Q When was the first time you saw Mr. Gavin?

20 A When they brought him to the sheriff's department  
21 at the jail.

22 Q The what department?

23 A At the sheriff's department at the jail.

24 Q At the jail. So approximately what time would  
25 that have been?

1 A It was somewhere around, I think they called in  
2 that they had picked him up somewhere around 10:00  
3 10:02 P.M., so it would have took them probably  
4 15, 20 minutes to drive, so probably...

5 Q Did you notice anything unusual about Mr. Gavin  
6 other than he's Mr. Gavin?

7 A No, sir, other than he was just wet.

8 Q Okay. Did you take any pictures of him?

9 A No, sir, not at that time.

10 Q Did anybody take any pictures of him?

11 A I'm sure they took some pictures of him when they  
12 booked him in, yes, sir.

13 Q Is that standard procedure?

14 A Yes, sir, it is.

15 Q Okay. There is facilities right there where you  
16 take them in?

17 A Yes, sir.

18 Q To take pictures. Have you ever placed Mr. Gavin  
19 in a lineup?

20 A No, sir.

21 Q Has it been done?

22 A No, sir, it has not.

23 Q Have you ever had any of the witnesses look up,  
24 witnesses in this case, that may say they saw or  
25 didn't see or might have seen or partially saw

1 someone that might have looked like Mr. Gavin, any  
2 potential witness or witness, have you ever had  
3 any of them view a lineup in this case?

4 A No, sir. No, sir.

5 Q What about a, what's called a photo array, you know  
6 what I'm talking about because you're a police  
7 officer.

8 A Yes, sir.

9 Q Could you tell the Court and the jury what a photo  
10 array is?

11 A It's a lineup with six or seven, depends on who,  
12 it depends on whether -- a lot of people use six  
13 photos and some of them use more, but you use six  
14 different photos in a lineup.

15 Q And what you're saying is that you have suspect's  
16 picture in there somewhere, right?

17 A Yes, sir. Yes, sir.

18 Q And then you have five or six pictures of other  
19 people?

20 A Yes, sir.

21 Q That look?

22 A Similar to him, yes, sir.

23 Q In a generic way like the suspect.

24 A Yes, sir.

25 Q And then you ask the witness, person who might

1 have seen, you ask them if they see him there; is  
2 that correct?

3 A Yes, sir.

4 Q See the person?

5 A Yes, sir, that's right.

6 Q That wasn't done?

7 A No, sir.

8 Q Did Mr. Gavin have any other keys on his person?

9 A No, sir, that was the only key that I found.

10 Q Did you inventory the items that were taken from  
11 his person?

12 A I had the clothes and the key, yes, sir. That's  
13 the items that I had.

14 Q You took the key out of the clothes?

15 A Out of his -- they were out of his blue jeans is  
16 what they were out of.

17 Q But the things that were taken from his person, do  
18 you know anything about anything that was taken  
19 from his person? Do you understand what I mean  
20 when I say it that way?

21 A No, sir, I don't. I did not take anything off of  
22 Mr. Gavin, other than his clothes was taken off in  
23 front of me and gave to me.

24 Q Do you know if anybody took anything off of him?

25 A No, sir.

1 Q Took any personal item, billfold, ring? Change  
2 from his pocket, another set of keys?

3 A No, sir. There was no billfold, no, sir, there  
4 was none that I know of.

5 Q The only thing on his entire person was one key;  
6 is that what you're --

7 A No, sir. That's the only thing that I know of  
8 that was found, yes, sir.

9 Q Were you there?

10 A Yes, sir, I was there when he was being -- when  
11 his clothes were being taken off, and like I say,  
12 they were taken off and handed to me.

13 Q Okay. This road that I've referred to earlier?

14 A Yes, sir.

15 Q That goes out the bottom of the picture there?

16 A Yes, sir.

17 Q Do you know the name of that road?

18 A No, sir, I don't. That's got a county road  
19 number, but I can't just sit here and tell you  
20 what the county road number is. I can't tell you,  
21 no, sir.

22 Q Okay. The other road, that goes off from the "Y"  
23 there, that's 48 you've testified; is that  
24 correct?

25 A Yes, sir.

1 Q And that goes to Sand Rock, doesn't it?

2 A Yes, sir.

3 Q This is a rural area out here?

4 A Yes, sir, it is.

5 Q There is woods all around, isn't there?

6 A Yes, sir.

7 Q There are a few houses around there, too, aren't  
8 there?

9 A Yes, sir, there's a few, yes, sir.

10 Q And just a little bit up the road there, there is  
11 a service station, isn't there, just not far away?

12 A Yes, sir, not far from the intersection.

13 Q You can almost see it from the...

14 A Yes, sir.

15 Q You've already said you didn't cordon off the area  
16 against standard procedure. Now, you said that  
17 you went back, looked for the gun. How did you do  
18 that?

19 A We went back and searched the area for the gun.  
20 There was several of us that went back together  
21 and looked for it.

22 Q How long did you look before you found it?

23 A That morning we looked, it was a pretty good  
24 little while. I'm not sure exactly how long it  
25 was we looked for it that morning.

1 Q Which morning are you talking about?

2 A I'm talking about the morning that we found it.

3 Q That would have been about the 13th, right?

4 A Yes, sir.

5 Q Two hours?

6 A Probably, yes, sir. Could have been more, could  
7 have been less.

8 Q Mr. Wilson, you're still in charge of this  
9 investigation; is that correct? I mean, it's  
10 ongoing, isn't it?

11 A Yes, sir.

12 Q Have you received any information in the course of  
13 your investigation that Mr. Gavin has been allowed  
14 to send items that were taken off of his person  
15 back to his home in Illinois?

16 A I think the jailers did send a watch back.

17 Q Could there have been anything else?

18 A Not that I know of, no, sir. There was nothing  
19 else that I saw.

20 Q Okay.

21 MR. UFFORD: Nothing further.

22 MR. O'DELL: Two questions.

23 RE-DIRECT EXAMINATION

24 BY MR. O'DELL:

25 Q Investigator Wilson, you've been cross-examined

1 extensively about certain portions of several  
2 reports. I believe you were asked about a  
3 statement that Tony Burch said that Mr. Meeks gave  
4 to him. You were asked about a statement that Mr.  
5 Lieutenant or Deputy Arambisich from Will County  
6 Sheriff's Department wrote out that Meeks had  
7 given to him, and I believe you went and  
8 interviewed him with Danny Smith on two separate  
9 occasions; is that correct?

10 A Yes, sir, that's right.

11 Q One you attempted to tape record and it didn't  
12 work, but you wrote out a synopsis?

13 A Yes, sir.

14 Q And then you went back a month later, basically,  
15 and interviewed him a second time, this time on  
16 tape.

17 A Yes, sir.

18 Q All of these statements have been given to your  
19 knowledge to the defendant.

20 A Yes, sir.

21 Q And have you read all those statements yourself?

22 A Yes, sir.

23 Q In any of those statements do you find any  
24 contradictory statements made by Mr. Meeks about  
25 what happened on March the 6th?



1 A No, sir.

2 Q Let me ask you a follow-up question on that.  
3 Based on the information that you received from  
4 all of those statements that were consistent, were  
5 you able to take items of those statements and  
6 corroborate Mr. Meeks' story?

7 A Yes, sir.

8 Q Have you found anything in your efforts to  
9 corroborate Mr. Meeks' statement that has appeared  
10 or that it has occurred that was untruthful to you  
11 or in any of those statements?

12 A No, sir.

13 Q When Mr. Gavin was taken from the creek and  
14 brought to the sheriff's office, I believe you  
15 said that he didn't have anything on him. Did  
16 that include an absence of identification?

17 A Yes, sir, he didn't have any identification.

18 Q None whatsoever?

19 A No, sir.

20 Q And this is a very rural area of Cherokee County,  
21 Alabama, isn't it?

22 A Yes, sir.

23 Q Nothing like Chicago, is it?

24 A No, sir.

25 Q Do you know if Mr. Gavin had any family or friends

1 down here?

2 A I don't know of any, no, sir.

3 MR. O'DELL: I believe that's all.

4 THE COURT: Anything?

5 MR. UFFORD: One more question.

6 RE-CROSS EXAMINATION

7 BY MR. UFFORD:

8 Q Who is Nelson Burris?

9 A Nelson Burris?

10 Q Yes.

11 THE COURT: How do you spell that?

12 MR. UFFORD: B-u-r-r-i-s. .

13 A He was one of the first people, I think, that  
14 Dewayne had called.

15 Q Where?

16 A In Fort Payne.

17 Q So did Dewayne call Fort Payne first?

18 A I'm not for sure whether he called him first or  
19 not, but I know he was -- Nelson Burris was one of  
20 the people that he called.

21 Q In your investigation of this case regarding  
22 Dewayne Meeks, who was the first person, who was  
23 the first entity in Alabama that he contacted?

24 A I believe the first person that they contacted in  
25 Alabama was Tony Burch, I believe, with the police

1 department.

2 Q His friend in the Fort Payne Police Department,  
3 DeKalb County?

4 A Yes, sir, I think that's right.

5 MR. UFFORD: That's all at this time.

6 MR. O'DELL: Just one more question.

7 FURTHER RE-DIRECT EXAMINATION

8 BY MR. O'DELL:

9 Q Isn't it a fact, Mr. Wilson, or is it a fact that  
10 within 24 hours of this shooting taking place,  
11 your records and based on the question that Mr.  
12 Ufford gave to you, Mr. Meeks went to at least two  
13 separate law enforcement agents and gave full and  
14 complete statements?

15 A Yes, sir.

16 Q Statements that you have been able to corroborate?

17 A Yes, sir.

18 Q And statements to which you have found no  
19 falsehoods?

20 A That's correct.

21 MR. O'DELL: That's all.

22 MR. UFFORD: I've got to ask.

23 FURTHER RE-CROSS EXAMINATION

24 BY MR. UFFORD:

25 Q Are you saying within 24 hours?

1 A I think that's right, yes, sir. He left here, my  
2 understanding he left here and he went back to  
3 Chicago and that's when he called his friends in  
4 Chicago.

5 Q I understand he called his friends in Chicago. Do  
6 you know the capacity in the Illinois police  
7 department of Mr. Arambisich?

8 A He is a deputy is my understanding.

9 Q Okay. So this statement, do you know where this  
10 statement was made?

11 A I think he talked, went to his house or he may  
12 have called him on the phone and talked to him  
13 about it, yes, sir.

14 Q That's not standard procedure, is it?

15 A Well, you know, if he called him and told him, yes.

16 Q Let me ask you. In Alabama, is that the way we do  
17 it?

18 A No, sir, we probably went and talked to him face  
19 to face.

20 Q I understand.

21 MR. UFFORD: Nothing further.

22 MR. O'DELL: State has nothing further, Judge.

23 THE COURT: Thank you, sir, you may come down.  
24 Ladies and gentlemen, let's take a recess for a  
25 few minutes. Hopefully we can get started back in

1 about 10 minutes. Please do not discuss the case  
2 and do not allow it to be discussed.

3 (3:26 P.M. Recess)

4 (3:45 P.M. Jury present)

5 MR. O'DELL: Judge, we have this box. We've  
6 got some additional witnesses one of them has, but  
7 I think she's gotten that one.

8 THE COURT: 25, 26 and 27 were marked, 25 was  
9 admitted, 26 and 27 were not offered, they were  
10 marked for identification.

11 MR. O'DELL: May we move them over here when  
12 we get through with our next witness, the next  
13 witness will be the one we admit them with.

14 THE COURT: Thank you. You may call your next  
15 witness.

16 MR. O'DELL: State calls Mark Hopwood.

17 MARK HOPWOOD

18 Being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. O'DELL:

21 Q State your name, please.

22 A Mark Hopwood.

23 Q And, Mr. Hopwood, how are you employed?

24 A As a forensic scientist with the Alabama  
25 Department of Forensic Sciences.

1 Q How long have you been so employed?

2 A The past 10 and a half years.

3 Q Let me you ask if back on March the 6th, 1998, or  
4 March 7th, 1998, you had an occasion to be  
5 requested, your assistance to be requested here in  
6 Cherokee County as a result of a homicide?

7 A Yes.

8 Q Involving William Clinton Clayton?

9 A Correct.

10 Q Would you tell these ladies and gentlemen what you  
11 did when you came up here, please.

12 A We were requested to process a van that had been  
13 recovered related to that particular incident, and  
14 they had impounded it at the sheriff's department  
15 and we processed it for latent prints and  
16 basically photographed it and I managed to recover  
17 one projectile from the vehicle.

18 Q Let me ask you, if you would, to tell these ladies  
19 and gentlemen what kind of training you've had,  
20 please, in the area of forensic sciences.

21 A I have Undergraduate from UAB, Masters of Science  
22 and Forensic Science from UAB and an M.P.A. from  
23 Jacksonville, certified by the American Board of  
24 Criminalistics, certified as a senior crime scene  
25 analyst of International Association for

1 Identification, and numerous continuing education  
2 every year.

3 Q Thank you for that. Let me ask you this. When  
4 you came up here, were you alone or did someone  
5 from the department come with you?

6 A Warren Stuart out of our Birmingham office met me  
7 here and he's the senior fingerprint person.

8 Q All right. As part of your investigation or your  
9 processing of this van, what steps did you take,  
10 please.

11 A Just, it's a general process. You look at it over  
12 all, see what you can see, photograph the inside,  
13 the outside, and try to determine what you're not  
14 going to damage as you're processing it, and  
15 initially start from the out and work your way in.  
16 We initially started dusting the outside around  
17 the doors. By dusting I mean processing for  
18 prints, and then moved inward, door panels, dash,  
19 controls, light switch, rear view mirror, stuff  
20 like that. And you work it for prints first  
21 because that's probably the most likely thing you  
22 would destroy as you're going through it, and then  
23 from there we noticed the defect in the passenger  
24 door, and after we had finished processing for  
25 prints, just removed the panel from the door and

1 kept the bottom portion to recover the spent  
2 bullet from the door panel.

3 Q Which door was that, please, sir?

4 A The driver's -- I mean, the passenger's door  
5 opposite the driver's side.

6 Q With respect to your processing the van for  
7 prints, I notice you said the dash and all the  
8 dials and stuff. Did you process the steering  
9 wheel as well?

10 A Yes.

11 Q In your investigation and your procedure and  
12 processing for prints, were you able to detect any  
13 latent prints of any use?

14 A We did not recover anything useable from that  
15 vehicle.

16 Q All right. And with respect to the projectile,  
17 who actually, which one of you two actually took  
18 possession of the projectile, please, sir?

19 A I actually recovered that.

20 Q And what did you do with it, please, sir?

21 A After photographing it in place and recovering it,  
22 I released it to Bryant Dooley who was a contract  
23 employee with us that transported evidence and  
24 bodies at that time.

25 Q When you gave that .40 caliber projectile from the



1 van to Bryant Dooley, was it in the same or  
2 substantially the same condition as it was when  
3 you recovered it from the van?

4 A It was.

5 Q Is it unusual or uncommon for you not to be able  
6 to locate prints in a vehicle or in a scene like  
7 this?

8 A It's actually more unusual to get prints from a  
9 vehicle like this. The interior of a vehicle, you  
10 have all the textured dash components, the doors  
11 and everything are textured plastic and vinyl, you  
12 really don't have a smooth, solid surface like  
13 glass or this shellacked wood for a print to adhere  
14 to, so it's amazing you might process -- well, as  
15 a matter of fact, we've got one going right now in  
16 this county that we're processing right now  
17 sitting there being fumed right now, and I checked  
18 it at lunch and so far I haven't seen anything.  
19 So, it's not uncommon not to get prints from the  
20 interior.

21 MR. O'DELL: I think that's all we have.

22 Thank you, Mr. Hopwood. Mr. Smith will have some  
23 questions for you.

24 CROSS EXAMINATION

25 BY MR. SMITH:

1 Q Mr. Hopwood, you stated, I think, that you didn't  
2 recover anything useable from the van.

3 A Fingerprints.

4 Q Fingerprints. Is that to say that you did not  
5 recover any whole prints that were of sufficient  
6 quality that you could get enough points to make a  
7 comparison, is that?

8 A All we were able to develop was smudges. I mean,  
9 just a fraction of ridgeous detail sometimes is  
10 useable, so we lift anything that has sufficient  
11 ridge detail that could be compared, and we did  
12 not recover anything with sufficient detail to be  
13 comparable.

14 Q Now, you said that you dusted this van from the  
15 outside working your way in; is that correct?

16 A Correct.

17 Q Is dusting the most common method of looking for  
18 latent prints?

19 A Yes.

20 Q Are there more sophisticated methods of looking  
21 for latent prints?

22 A Yes.

23 Q You mentioned fuming?

24 A Correct.

25 Q Is that not -- that's a different method from the

1 dusting, is it not?

2 A It supplements dusting, and in this case we didn't  
3 fume because we used florescent powders and a  
4 different light source, so that kind of deletes  
5 the need to fume.

6 Q There is also a method, or maybe I'm getting my  
7 methodology confused here. Isn't there a method  
8 that involves using a form of acrylic liquid that  
9 vaporizes in the air?

10 A That's fuming.

11 Q That's fuming?

12 A That's cyanoacrylate fuming.

13 Q Okay. But that wasn't done in this case?

14 A No.

15 Q Are you telling us that of all the  
16 surfaces on this truck, interior, the  
17 exterior, all you got was smudges?

18 A Yes.

19 MR. SMITH: That's all I have.

20 MR. O'DELL: State has no further questions  
21 and we ask this gentleman be excused.

22 THE COURT: You may come down. Thank you very  
23 much.

24 DAVID HIGGINS

25 Being duly sworn, testified as follows:

1 A Permission to address the bench.

2 THE COURT: I'm not comfortable with you  
3 making a remark in the presence of the jury.

4 A It's a physical thing with me, sir.

5 THE COURT: Yes, sir.

6 A For the attorneys, I have a hearing impairment  
7 that's very -- and I ask you just to look at me  
8 and speak clearly because I have sworn to tell the  
9 truth I want to understand the question to make  
10 sure I can.

11 THE COURT: Very well, thank you.

12 A Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. O'DELL:

15 Q Would you tell us your name, please.

16 A I'm David Higgins.

17 Q And, Mr. Higgins, what do you do for a living?

18 A I'm retired.

19 Q So you live for a living, huh? What did you used  
20 to do for a living?

21 A I was a firearms and tool marks examiner for the  
22 Alabama Department of Forensic Sciences,  
23 Birmingham Regional Laboratory.

24 Q And for how long did you do that, please, sir?

25 A A little over 14 years.

1 Q When did you retire?

2 A July of last year.

3 Q Let me ask you if you had an occasion to receive  
4 some items of evidence in the case involving the  
5 murder of William Clinton Clayton?

6 A Yes, sir, the death investigation involving Mr.  
7 Clayton.

8 Q Yes, sir. Let me ask you specifically if you  
9 received a .40 caliber projectile from a van?

10 A Yes, sir, I did.

11 Q And from whom did you receive that, please, sir?

12 A From Mr. Bryant Dooley.

13 Q And to whom did you give that item, please, sir?

14 A It was placed in evidence storage in the firearms  
15 section, and I retired before I had an opportunity  
16 to work the case.

17 Q Okay. When you put it in the evidence storage,  
18 was it in the same or substantially the same  
19 condition as it was when you received it from Mr.  
20 Dooley?

21 A Yes, sir, it was in a sealed envelope.

22 Q Okay. Let me ask you about a .40 caliber shell  
23 casing from Highway 68.

24 A I don't know the location.

25 Q All right. Do you have an indication of a single

1 shell casing that was given to you?

2 A I received a single shell extended .40 caliber  
3 cartridge in a sealed plastic bag.

4 Q From whom did you receive that, please?

5 A That was from Mr. Larry Wilson.

6 Q And to whom did you give that, please?

7 A That was also placed with the other items that I  
8 had received relative to this case at that time.

9 Q All right. Was that also sealed?

10 A Yes, sir.

11 Q And when you put it in the evidence locker, was it  
12 in the same or substantially the same condition  
13 and sealed as it was when you received it?

14 A Yes, sir, it was.

15 Q Okay. Let me ask you about another item, a .40  
16 caliber Glock pistol. Did you receive such an  
17 item?

18 A I received a brown paper bag sealed that was  
19 reported to contain a Glock pistol, .40 caliber.

20 Q Who was that from, please, sir?

21 A That was also from Mr. Larry Wilson.

22 Q All right, and what did you do with that pistol,  
23 please, sir.

24 A It was also placed with the other items relative  
25 to this case.

1 Q And was that, likewise, placed in that locker in the  
2 same or substantially the same condition as you  
3 received it in the bag?

4 A Yes, sir, it was.

5 Q Okay. And I'll ask you about two .40 caliber  
6 shell casings.

7 A Yes, sir.

8 Q Did you receive a package or items of evidence  
9 relating to those shell casings?

10 A Yes, sir, I received a sealed brown paper bag that  
11 was purported to contain two extended .40 caliber  
12 cartridge cases.

13 Q And from whom did you receive those, please?

14 A That was also from Mr. Wilson.

15 Q Okay. And what did you do with those two shell  
16 casings, please, sir?

17 A Along with the other items, they were placed in  
18 the locker.

19 Q Okay. And was that, you said again, in the  
20 firearms locker?

21 A We have two -- we had a room and then there is a  
22 locked cabinet, and I indicate here on my note  
23 that it was in the cabinet. It remained locked  
24 after I worked and all that during work time and  
25 that was it.

1 Q When you placed that in the evidence locker, was  
2 it in the same or substantially the same condition  
3 as it was when you got it from Mr. Wilson, those  
4 two shell casings?

5 A Yes, sir.

6 MR. O'DELL: Okay. I believe that's all I  
7 have at this time for him.

8 CROSS EXAMINATION

9 BY MR. SMITH:

10 Q Good afternoon, Mr. Higgins, I just have a few  
11 questions for you. My name is Bayne Smith and I  
12 represent the defendant in this case. You said  
13 you retired as a firearms and tool examiner; is  
14 that correct?

15 A Tool marks examiner, yes, sir.

16 Q Tool marks examiner, yes, sir. Would it be fair  
17 to say you probably have some fair amount of  
18 experience with firearms generally; is that true?

19 A In the area of firearms and tool marks  
20 examination, I started in 1972. And in the area  
21 of firearms, I was raised around them. I was also  
22 army national guard and retired from the  
23 international guard and been a competitive  
24 shooter, also.

25 Q Are you familiar with the Glock arms line of



1 pistols generally?

2 A Yes, sir. I carried a 9 millimeter caliber Glock  
3 as my gun while I worked at forensics full time.

4 Q Are you familiar with the .40 caliber Glock?

5 A Yes, sir.

6 Q Now, is that a semi-automatic? We've seen a  
7 picture of it, so I'm assuming it's either a  
8 semi-automatic or an automatic.

9 A It's a semi-automatic, which means it fires every  
10 time you pull the trigger.

11 Q All right, sir. And when a semi-automatic weapon  
12 like the Glock .40 in particular fires a shot, it  
13 ejects a shell casing automatically; is that  
14 correct?

15 A If it's functioning properly, that's correct.

16 Q Can you tell me with that particular weapon,  
17 the .40 caliber Glock, does it -- can you tell me  
18 what direction the shell casing is ejected at the  
19 time it's fired?

20 A I haven't fired -- the only .40 calibers that I  
21 fired I believe were in a test fire room and  
22 we caught them in a box. Glocks will vary with  
23 your grip to throwing them directly back over your  
24 shoulder to putting them to the right, depending  
25 on how you're holding the gun. It's a short

1> recoil-type operating mechanism.

2 Q If we were to show you a picture of this  
3 particular weapon, is there any way just from  
4 looking at it you could tell us which, where the  
5 shell casing, in which direction that particular  
6 weapon would have ejected a shell casing?

7 A As I said, it could either go to the right or back  
8 toward the rear, somewhere in that range. And,  
9 no, sir, I couldn't tell you that by looking. I  
10 could look at the firearm itself and I couldn't  
11 tell you.

12 Q I understand. Can you give us, again, any  
13 approximation how far it might eject that shell  
14 casing?

15 A No, sir. Like I said, I've had the only  
16 experience I've had with the Glock 40's was in the  
17 test fire room and we tried to catch the  
18 cartridges in a box right next to it, so it's hard  
19 to get a pattern. I really wouldn't know, to  
20 honestly answer your question.

21 MR. SMITH: All right, sir. That's all I have  
22 at this time. Thank you very much, Mr. Higgins.

23 MR. O'DELL: Judge, that's all the State has  
24 of this witness and we would ask that he be  
25 excused.

1 THE COURT: Thank you for being here. You're  
2 excused.

3 MR. HIGGINS: Thank you, Your Honor.

4 MR. O'DELL: I think he needs to return to  
5 retirement.

6 MR. HIGGINS: Sir?

7 MR. O'DELL: I said are you ready to return  
8 back to your retirement?

9 MR. HIGGINS: Yes, sir.

10 ANGELO DELLA MANNA

11 Being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. O'DELL:

14 Q Good afternoon.

15 A Hello, sir.

16 Q If you would, state your name for these ladies and  
17 gentlemen of the jury.

18 A My name is Angelo Della Manna, D as in David,  
19 e-l-l-a, capital M as in Mary, a-n-n-a.

20 Q What do you do for a living?

21 A I'm a forensic scientist in the DNA section of the  
22 Alabama Department of Forensic Sciences,  
23 Birmingham laboratory.

24 Q And how long have you been so employed in that  
25 capacity?

1 A Approximately seven years.

2 Q If you would, tell us a little bit about your  
3 background and your education in this field.

4 A I received my Bachelor's Degree in Chemistry  
5 from the University of Toronto in Toronto, Canada.  
6 I then received my Master's Degree in Forensic  
7 Sciences from the University of Alabama in  
8 Birmingham and then completed the extensive DNA  
9 training, both in-house as well as the FBI academy  
10 in Quantico, Virginia.

11 Q Let me ask you, pursuant to your occupation and  
12 your experience, were you asked or did you receive  
13 any items of evidence from officials here in  
14 Cherokee County concerning the death of Mr.  
15 Clayton, William Clinton Clayton?

16 A Yes, sir, I did.

17 Q If you would, tell these ladies and gentlemen what  
18 you received, please.

19 A On March 16th of 1998, Investigator Larry Wilson  
20 of the Cherokee County Sheriff's Department  
21 submitted three items separately packaged to the  
22 Birmingham laboratory for my examination. One was  
23 a moderately soiled black toboggan identified from  
24 being from the woods of County Road 48. The  
25 second item was a pair of Levi blue jeans and a

1 pair of black shoes identified as being from Keith  
2 Edmund Gavin, and the third item was a pink  
3 long-sleeved pullover shirt and a gray T-shirt  
4 also identified as being from Mr. Gavin.

5 Q What was the request with respect to these items,  
6 please, sir?

7 A To examine them, to see if there is any biological  
8 stains on them, primarily blood sustains.

9 Q And tell us what kind of test or analysis you  
10 performed on these items, please.

11 A Routinely what I do whenever I receive clothing or  
12 items of evidence within the laboratory, I'll  
13 examine them, both visually to see if there is any  
14 biological stains on them such as a blood stain,  
15 for example, and if I identify what I think might  
16 be a blood stain, then the analysis proceeds from  
17 the very general to the very specific. Is it a  
18 new blood stain? There is certain chemical tests  
19 we can do to identify if it is a blood stain.  
20 If it is, indeed, a blood stain, then is it a  
21 human blood stain or is it deer blood, dog blood,  
22 cat blood, things of that nature. And if it is,  
23 indeed, a human blood stain, then we go forward  
24 and characterize it through its DNA profile to see  
25 who could be the donor of that blood stain.

1 Q Did you, in fact, perform these tests on those  
2 items of evidence that were submitted to you?

3 A Yes, sir, I examined them to see if there was any  
4 biological stains upon them.

5 Q And what were your results, please?

6 A I didn't find any blood stains on any of the  
7 items.

8 Q And that included the three items that you've  
9 talked to us about, the toboggan, the jeans, and  
10 the shirt?

11 A That's correct.

12 MR. O'DELL: I believe that's all.

13 MR. SMITH: Good afternoon, Mr. Della Manna.

14 MR. DELLA MANNA: Hello, sir.

15 MR. SMITH: We met once earlier this spring, I  
16 don't know if recall or not, but there was another  
17 trial in Anniston you testified, different case, I  
18 just wanted to say hi. I don't have any  
19 questions.

20 MR. DELLA MANNA: Hello.

21 THE COURT: You may come down. Anything else?

22 MR. O'DELL: Judge, we would offer at this  
23 time the toboggan, and I'm not sure what number  
24 that is, let me look and see, State's exhibit  
25 number 10, and State's exhibits, I believe they're

1' 26 and 27.

2 THE COURT: Let me speak to you here at the  
3 bench just a minute.

4 (Sidebar conference)

5 (In open court)

6 DIRECT EXAMINATION RESUMED

7 BY MR. O'DELL:

8 Q Mr. Della Manna, when you finished analyzing these  
9 items, what if anything, did you do with them?

10 A I re-sealed the items in the package that they  
11 were submitted into with my initials across the  
12 seal to insure the integrity of the evidence and  
13 then returned them via delivery confirmation  
14 through UPS to Investigator Wilson, a detective  
15 down at the sheriff's office.

16 Q Were they delivered in the same or substantially  
17 the same condition as when you received them?

18 A Yes, they were.

19 MR. O'DELL: I'm sorry, now I would ask  
20 that they be admitted.

21 THE COURT: Okay. State's exhibits 10,  
22 State's exhibits 26 and 27 are admitted.

23 (Whereupon, State's exhibits 10, 26,  
24 and 27 admitted into evidence at this  
25 time)

1' MR. O'DELL: Thank you, Judge, and we ask that  
2 this witness be excused.

3 THE COURT: Yes, sir, you're excused. Thank  
4 you very much.

5 MR. O'DELL: Could we have just a second,  
6 Judge?

7 THE COURT: Yes, sir.

8 CHRISTOPHER LUCKIE

9 Being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. O'DELL:

12 Q Would you state your name, please.

13 A Christopher Luckie.

14 Q And, Mr. Luckie, where are you from?

15 A Birmingham, Alabama.

16 Q What do you do for a living, please, sir?

17 A I work for the Alabama Department of Forensic  
18 Sciences.

19 Q In what capacity, please, sir?

20 A I'm a firearms and tool marks examiner in  
21 training.

22 Q Let me ask you if you were here as part of a chain  
23 on some evidence?

24 A Yes, sir, as an employee.

25 Q Okay. And what we're going to do is we're going



1 to mark these items. From where did you get these  
2 items, please?

3 A From our storage room, sir.

4 Q Okay. The best way to go about this, would you  
5 please, one at a time, take a package and identify  
6 it, what it appears to be on the outside, where  
7 you got it, please, sir.

8 A It has our case number and it has an item number  
9 which is familiar to me, as well as this one, this  
10 one as well, as well you see here, here, here,  
11 here, there as well as there. (Indicating)

12 Q All right. Let me you ask on each of these items,  
13 where did you get these, please?

14 A From our storage room.

15 Q All right, and were they sealed like they are now  
16 when you retrieved them?

17 A Yes, sir.

18 Q And from the time you brought them up from  
19 Birmingham today to right now, have you done  
20 anything to them?

21 A Oh, no, sir.

22 Q Are they in the same or substantially the same  
23 condition right now as they were when you took  
24 them out of the locker earlier today?

25 A Yes, sir.

1 MR. O'DELL: I believe that's all we have of  
2 this witness, Judge.

3 MR. SMITH: No questions, Judge.

4 THE COURT: You may come down, sir.

5 RICH RECTOR

6 Being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. O'DELL:

9 Q Mr. Rector, we kind of boxed you in there. We'll  
10 work through it one at a time. If you would,  
11 please state your full name for the record.

12 A My name is Rich Rector.

13 Q Mr. Rector, where do you live?

14 A I live in Tuscaloosa, Alabama.

15 Q What do you do for a living, please, sir?

16 A I'm a firearms examiner with the Alabama  
17 Department of Forensic Sciences in their  
18 Birmingham lab.

19 Q And how long have you been so employed?

20 A I've been with the department for 12 years, and  
21 I've been exclusively in the firearms department  
22 going on five now.

23 Q Okay. In furtherance of your duties and  
24 responsibilities at the Department of Forensic  
25 Sciences, were you asked to examine and do

1 analysis or any kind of analytical tests on any  
2 items of evidence pertaining to a homicide case of  
3 William Clinton Clayton?

4 A Yes, sir.

5 Q If we can go maybe one at a time, if you will  
6 identify those bags, these exhibits, and we'll  
7 find out what's in them and get them marked, please,  
8 sir.

9 A Is there any particular order you would like me to  
10 go in?

11 Q Which ever way you prefer.

12 A I would prefer to go in numerical order if that's  
13 okay.

14 Q Okay, that would be fine.

15 A This bundle I'm taking right now is, let's start  
16 with item 1.

17 Q Please describe them.

18 A Sealed manilla envelope that I received into  
19 evidence in our laboratory. Item number 2 is a  
20 sealed plastic bag identified or actually does  
21 contain the expended cartridge casing. Item  
22 number 3 is a brown paper bag that is identified  
23 to contain .40 caliber Glock pistol. Item number  
24 4 is a sealed brown paper bag identified to  
25 contain shell casings. Item number 8 is a brown

1' paper bag identified to contain clothing. Item  
2 number 9 is a brown paper bag identified to  
3 contain clothing. Item number 10 is another brown  
4 paper bag identified to contain clothing. And  
5 item 11 which is attached to this bundle is a  
6 sealed manilla envelope identified to contain a  
7 bullet.

8 Q Okay. Let's now go back. Starting in numerical  
9 order, if you would, open or let us mark and you  
10 open and identify what you have in item number 1,  
11 please, sir.

12 A You say you would like me to open the package?

13 Q Yes, sir.

14 A Incidentally, these particular packages are all  
15 sealed right now and they have my initials on the  
16 outside.

17 Q While you're opening that, let me ask you this  
18 question. We just had a gentleman testify that he  
19 removed those from the locker today.

20 A Yes.

21 Q And can you tell us who put those in the locker?

22 A Sure. I put those in the locker.

23 Q All right, are they sealed in the same fashion  
24 now as they were when you put them in the locker?

25 A Yes.

1 Q And they appear to be in the same or substantially  
2 the same condition as they were when you put them  
3 in the locker?

4 A Yes, sir.

5 Q Okay, go ahead.

6 A Okay, we're at item number 1, and item 1 contains  
7 an expended full metal jacket bullet.

8 Q If you would, describe it for us.

9 A Okay, it's -- the bullet is a, like I said, copper  
10 jacketed metal jacket bullet. On my examination  
11 of this bullet based on certain physical  
12 characteristics I came to the conclusion that this  
13 was a .40 caliber or 10 millimeter caliber bullet,  
14 40 and 10 millimeter are basically the same  
15 bullet, but the cartridges are the differences  
16 between the two calibers.

17 Q Can you tell us where that item came from?

18 A This item was identified as coming from the  
19 passenger door.

20 Q That's what it says on the package?

21 A Correct.

22 Q Do you know from whom you received that?

23 A This came in -- I'm not certain. I don't have  
24 that receipt right in front of me. I think  
25 that's, no, I can't, I can't tell you who I had

1 that from. You most likely have a copy of that  
2 receipt. I seldom have that, so I don't know.

3 Q We'll look for that as you testify.

4 A Okay.

5 Q Let me back up while he's looking at that and ask  
6 you, if you would, for these ladies and gentlemen  
7 give us a synopsis of your background and  
8 education, please.

9 A Okay. To have the job that I have, the job  
10 classification is forensic science. In the state  
11 of Alabama, the requirements are, number one, is  
12 to have a four year degree from an accredited  
13 college in a natural science, natural science  
14 being chemistry, physics, biology or something of  
15 that nature. The second requirement is in that  
16 four year degree to have eight chemistry courses  
17 which usually amounts to somewhere in the  
18 neighborhood of three semester hours, not always,  
19 but eight chemistry courses. The way you become a  
20 firearms examiner, there is no school that you go  
21 to where upon graduation you are blessed as being  
22 a firearms examiner and given a case load.  
23 Firearms examiner is an apprenticeship where you  
24 work with other people who have been in the field  
25 for quite some time. That's what I did, I worked

1 with people who had been recognized as firearms  
2 examiners by our laboratory system and the courts.  
3 Q All right, I appreciate that. I believe you were  
4 asking about a receipt. Let me you ask if this is  
5 what you're talking about?

6 A Yeah, this is the one. I received that bullet  
7 from, well, the bullet was brought into the  
8 laboratory by Bryant Dooley, a contract driver.  
9 It was signed into our laboratory by David  
10 Higgins. I believe he's already presented  
11 testimony here. I then signed the bullet over  
12 from Mr. Higgins at a later date.

13 Q Okay. Did you receive any other items of  
14 evidence?

15 A Yes.

16 Q In ballistics form?

17 A Yes.

18 Q If you would, take your next one sequently.

19 A Okay.

20 Q If you would, open the package and identify it for  
21 us. Item 1 was a projectile from the van; is that  
22 correct?

23 A That's correct. Item 2, as I described earlier,  
24 is a plastic bag containing an expended cartridge  
25 case. The cartridge case is the gold colored

1 object in the back. Again, I received -- I signed  
2 this evidence over from Mr. Higgins in our  
3 laboratory.

4 Q Okay, let's have that one marked as well, please.  
5 Why don't I go ahead and identify them and mark  
6 them all at one time. If you would, please, Mr.  
7 Rector, any other items?

8 A Sure. In sequence, item number 3 is the brown  
9 bag. Do you want me to open this?

10 Q Yes, sir, please.

11 A Okay, the bag contains a pistol. This is a Glock  
12 model 22, from Smith and Wesson semi-automatic  
13 pistol.

14 Q Okay. And from whom did you receive that Glock  
15 pistol?

16 A Under the same circumstances. It was signed into  
17 our laboratory from Mr. Higgins and I consequently  
18 signed it over from Mr. Higgins. Also in the bag  
19 is an ammunition magazine, it will fit and  
20 function in the pistol, and some ammunition,  
21 some .40 caliber ammunition.

22 Q Okay, you can put those back in the bag.

23 THE COURT: What was the last thing you  
24 said?

25 A .40 caliber ammunition.



1 THE COURT: Unfired?

2 A Yes, sir.

3 THE COURT: I want to make sure that that is  
4 kept separate from the pistol.

5 A Okay, it's in the bag.

6 THE COURT: Is the .40 caliber ammunition in  
7 the pistol?

8 A No, it is not. It's in here as well as the pistol  
9 is in here.

10 THE COURT: I saw you opened the breach on the  
11 pistol. Thank you. Do you want the sack marked  
12 with an exhibit number? I have asked her to mark  
13 the pistol as exhibit 31, the magazine as 31A and  
14 the ammunition as 31B. That leaves the sack  
15 unmarked. Let's mark it as 31C.

16 Q Just so I won't get confused, item number 1 that  
17 you have testified to, the .40 caliber projectile  
18 from the van has been marked as State's exhibit  
19 number...

20 A 29.

21 Q 29. And the .40 caliber shell casing from Highway  
22 68 is 30?

23 A Correct.

24 Q And the .40 caliber Glock pistol, we've got 31 as  
25 the pistol, 31A as the magazine, 31B as the

1 ammunition and 31C is the sack? Item 4?

2 A Item 4 is another sealed paper bag and it contains  
3 two expended Smith and Wesson .40 caliber  
4 cartridge casings.

5 Q Can you tell us from whom you got those casings,  
6 please, sir.

7 A Yes. Again, that was signed into the lab by Mr.  
8 Higgins and I signed that over from Mr. Higgins in  
9 the laboratory.

10 Q And those are two .40 caliber shell casings from  
11 the bank/courthouse area?

12 A Yes, I'll read the bag to you. It says street  
13 between courthouse and Regions Bank.

14 Q Let's go ahead and get the last one so she can  
15 mark those two at the same time. Item number 11?

16 A Would you like the two in the one bag and mark the  
17 one bag?

18 THE COURT: Yes, sir, that'll be fine. Let me  
19 tell you what I would even prefer. If she has a  
20 clear plastic bag, put the two cartridges in a  
21 clear plastic bag, staple that to the brown paper  
22 bag and mark all that as number 32.

23 Q Okay. And I believe that brings us to the last  
24 item, item number 11?

25 A Yes, it's a manilla envelope, it's sealed, it's

1 identified to contain a bullet from back.

2 Q Okay, and from whom did you receive that?

3 A I received this from an evidence locker within our  
4 laboratory.

5 Q Okay. And has it got any seal or any -- does it  
6 have any markings on it?

7 A Yes, it has two separate particular markings on  
8 it, it has my mark, my seal, my mark, and then  
9 another seal that I recognize as one of the  
10 pathologists in our laboratory.

11 Q Dr. Steve Pustilnik?

12 A Correct.

13 Q So you received it in that sealed condition with  
14 his --

15 A Yes.

16 Q If you would, open that up and tell us what item  
17 number 11 contains, please.

18 A Inside is a tissue paper fold. Some pathologist  
19 use that fold to cover items of evidence, and this  
20 is another bullet similar to the one before. It's  
21 a full metal jacketed bullet I determined to be  
22 consistent within size, physical characteristics  
23 with a .40 caliber or a 10 millimeter.

24 Q Okay. Let's go back, then, and have you tell us  
25 more specifically what kind of test you did,

1 particularly on each of these five items or five  
2 separate pieces of evidence.

3 THE COURT: Let's get that one marked.

4 MR. O'DELL: I'm sorry.

5 THE COURT: 33 is now marked, it's the  
6 envelope containing the .40 caliber bullet.

7 Q Mr. Rector, let me, just to be certain that I  
8 asked you this. On each of these items, number  
9 29, 30, 31 through 31B and 32, I believe your  
10 response when I asked you from whom you received  
11 them, they were locked into the evidence locker by  
12 Mr. Higgins and you -- or they were signed into  
13 the lab by Mr. Higgins and you signed for them  
14 through the lab, forensic?

15 A That's correct.

16 Q Okay. And then on the last one, this one was from  
17 Dr. Pustilnik and you signed it out at the lab as  
18 well?

19 A Correct.

20 Q Okay. If you would, tell us what your findings  
21 were. What were you asked to do in this case,  
22 please, sir?

23 A In general what we're asked to do in firearms  
24 section most of the time is to examine guns,  
25 ammunition, ammunition components which includes

1 bullets, cartridge casings, sometimes powders, and  
2 we're usually asked to examine these and attempt,  
3 if we can, to make a determination of whether a  
4 particular gun fired a particular ammunition  
5 component, a bullet or a cartridge casing, or in  
6 some cases if a particular gun did not fire a  
7 bullet or cartridge casing. That's the bulk of  
8 the work in a firearms examination laboratory.  
9 Sometimes we're asked to examine items of  
10 clothing, we're asked to perform sometimes tests  
11 to determine or to see if we can determine an  
12 approximate distance that a gun may have been away  
13 from a target when it was fired. But as I said,  
14 mainly our job concentrates on identifying or  
15 attempting to identify ammunition and its  
16 components with guns.

17 Q And were you asked to do so in this case?

18 A Yes.

19 Q And what exactly were you asked to compare, please,  
20 sir?

21 A To compare the submitted bullets and cartridge  
22 casings to the gun that was submitted in this  
23 case, to see if this gun did or did not fire.

24 Q All right, did you, in fact, conduct such tests?

25 A Yes.

1 Q And what tests did you do, please, sir, if you  
2 could tell us how that works?

3 A Okay, do you want me to explain the concept of  
4 identifying?

5 Q Yes, sir.

6 A All right. When a gun is made, it's made by  
7 people like you and me, most of the times in a  
8 factory. Now, in the process of making a gun,  
9 people use tools, and during the course of  
10 manufacture, these tools make marks on the guns,  
11 on the barrels, on an area called the breach face,  
12 sometimes they make marks on other components of  
13 the gun, but we're mainly concerned with the  
14 barrels and breach faces of guns. The barrels in  
15 most modern guns are rifled. That means that  
16 they have high spots and low spots inside the  
17 barrel that cause the bullet or the projectile to  
18 twist as it goes out the barrel after the gun is  
19 fired. And everybody here has seen a football  
20 game and seen the quarterback throw a pass. Well,  
21 you know, a football is long, and when he throws  
22 the pass, he puts a spin on that ball. Well, that  
23 spin on that ball causes that ball to be more  
24 stable as it flies, more accurate. That's the  
25 same principle behind the rifle and the barrel.

1 It imparts a spin to the bullet or the projectile  
2 which causes that bullet to be more stable while  
3 it's flying, makes it more accurate. In doing  
4 this in the factory, these tools make marks on the  
5 barrels that are individual, they are particular,  
6 they are unique to a particular gun. As the  
7 bullet travels down the barrel, these markings are  
8 passed from the barrel, from the lands, that's  
9 what these high spots in the barrel are called,  
10 they're impressed on to the bullet. So when we  
11 recover a bullet, the bullet is submitted, first  
12 thing we do is look at the bullet to determine  
13 approximately what caliber it may be, what size it  
14 is, what kind of gun it come out of, and to see if  
15 there is any of these identifiable markings that  
16 were passed from the barrel to the bullet that  
17 we might be able to use to identify whether a  
18 bullet came from a particular gun. Now, these  
19 unique markings are not only found in the  
20 barrel, but are also found on other parts of the  
21 gun. In this particular case we'll talk about  
22 the breach face of the gun. Now, if you remember  
23 when I held that gun up, I have a handle that I  
24 hold and there is a long part up here. Well, this  
25 part here on this particular type of gun is called

a slide. Okay? Now, the slide when the gun is fired, the recoil from the gun causes the slide to move backwards. Now, the force that propels the bullet out of the end of the barrel also causes the slide to be forced back to its stopped position. Well, when it does this, the cartridge case that held the bullet and the powder is shoved against the breach face, it's just slammed against it really hard. Now, if there are any markings that were made during manufacture on this breach face, they may well be passed from the breach face to the cartridge. And that's what we use to try and identify or to link cartridge case or shotgun hull or whatever back to a particular gun. So we have two things we look at. We have the bullet and we have the cartridge case.

Q Did you follow that procedure and process in analyzing the objects that were submitted to you?

A Yes.

Q Did you, in fact, take item number 3, which you have identified as a Glock pistol -- let me ask you, if you would, to check your record and see what the serial number of that pistol was, please.

A I have the serial number of item 3 is CCN449US.

Q All right. Taking that .40 caliber Glock pistol



1 with that serial number, did you then do  
2 comparison tests on items fired from that weapon  
3 with items submitted?

4 A Yes. We don't do it -- we can't do a direct  
5 comparison between a bullet or a cartridge case to  
6 the inside of a barrel or to the breach face.  
7 That would be like comparing an apple to an  
8 orange. We want to compare apples to apples. So  
9 what we want to do is take ammunition and we test  
10 fire the gun in question and we recover the  
11 bullets and the cartridge casings and then compare  
12 bullets that we know were test fired or were fired  
13 from a particular gun to bullets that are being  
14 questioned as to if they were fired from a  
15 particular gun.

16 Q And you did that in this case?

17 A Yes.

18 Q Let's go specifically item by item. On item  
19 number 1, .40 caliber projectile from the van.  
20 Were you able to do a comparison test from that to  
21 see if it was fired from item number 3?

22 A Yes.

23 Q And what were your results, please?

24 A I found item number 1 was, in fact, fired through  
25 the barrel of that particular pistol.

1 Q Okay. Item number 2, .40 caliber shell casing  
2 found on Highway 68, did you do a comparison test  
3 on that as well?

4 A Yes.

5 Q Do you have a finding for us on that one?

6 A Yes.

7 MR. SMITH: Judge, excuse me, at this point  
8 I'm going to have to ask if I could take this  
9 gentleman on voir dire briefly.

10 THE COURT: You may.

11 VOIR DIRE EXAMINATION

12 BY MR. SMITH:

13 Q Mr. Rector, before we go any further, you've  
14 testified that the projectiles and the shell  
15 casings have individual characteristics. Rather  
16 than simply telling us that these shell casings  
17 and these projectiles came from this .40 caliber  
18 Glock, are you going to be able to tell us today  
19 what those individual characteristics were that  
20 lead you to conclude that the projectile and the  
21 shell casings came from the Glock?

22 A Do you mean a visual representation of what I saw?

23 Q Well, I would simply like to know, you've given us  
24 a conclusion. But you haven't told us how you  
25 arrived at that conclusion.

1 A Okay. Certainly.

2 THE COURT: Before you begin that explanation,  
3 this is a voir dire examination.

4 MR. SMITH: I simply asked him the question is  
5 he going to be able to do that.

6 THE COURT: And his answer was certainly,  
7 which I take to be yes?

8 A Yes.

9 THE COURT: Okay. Now, for voir dire  
10 examination, I think you're through. For cross-  
11 examination --

12 MR. SMITH: Yes, sir. I didn't expect to go  
13 through the whole process with him right now. If  
14 he says he can do it, that's fine, I'll turned it  
15 back over to Mr. O'Dell.

16 THE COURT: Apparently Mr. O'Dell doesn't  
17 intend to carry him through that, and I think that  
18 would be matter for cross-examination.

19 MR. SMITH: All right, sir, that's fine.

20 THE COURT: All right, thank you.

21 DIRECT EXAMINATION RESUMED

22 BY MR. O'DELL:

23 Q Item number 1, I believe you said that it was  
24 fired from the .40 caliber Glock pistol that was  
25 submitted to you?

1 A Yes.

2 Q Item number 2, the .40 caliber shell casing from  
3 Highway 68?

4 A Yes, I determined that it, too, was fired from that  
5 particular pistol.

6 Q How about item number 4?

7 THE COURT: I'm sorry, I hate to be so ticky  
8 about this, but those items are exhibit numbers  
9 now.

10 MR. O'DELL: I'm sorry. You're right.

11 THE COURT: Let's go back and start over.

12 Q Exhibit number 29, State's exhibit number 29,  
13 which purports to be a .40 caliber projectile from  
14 the van.

15 A Yes, I determined it was fired through the barrel  
16 of the submitted pistol, State's exhibit 31.

17 Q Correct. How about item, exhibit number 30,  
18 please, the one .40 caliber shell casing from  
19 Highway 68?

20 A Yes, I determined it, too, was fired from State's  
21 exhibit number 31.

22 Q Okay. State's exhibit number 32 which contained  
23 two .40 caliber shell casings from the bank and  
24 the courthouse.

25 A Yes, I determined that they were also fired in

1 State's exhibit 31.

2 Q And finally, State's exhibit number 33, the .40  
3 caliber projectile from the victim's body.

4 A Yes. I determined it also was fired through the  
5 barrel of State's exhibit 31.

6 Q I believe that's got all four of the exhibits that  
7 we wanted to have compared; is that correct, Mr.  
8 Rector?

9 A Yes.

10 Q Okay.

11 MR. O'DELL: We would move to admit State's  
12 exhibits number 29, 30, 31 through 31C, 32 and 33.

13 THE COURT: All of those exhibits are  
14 admitted.

15 MR. SMITH: Judge, may I be heard?

16 THE COURT: Yes, sir.

17 VOIR DIRE EXAMINATION

18 BY MR. SMITH:

19 Q On the last exhibit which was, tell me again, Mr.  
20 Rector, was that not the projectile that was  
21 recovered from -- that was given to you as having  
22 been recovered from the body of Mr. Clayton?

23 A You refer to State's exhibit 33, I think?

24 MR. O'DELL: Yes, sir, that's correct.

25 Q Yes.

1 A Yes.

2 Q And you concluded and you just told the jury that  
3 that projectile was determined to have been fired  
4 from this .40 caliber Glock; is that correct?

5 A Yes.

6 Q Well, didn't you say in your report dated March  
7 11, 1999, that that projectile lacked the detail  
8 for an identification?

9 A What report are you looking at?

10 Q I think you have a report I don't have.

11 THE COURT: Let's take a break for a minute  
12 and let them look at their paperwork a minute and  
13 give you a break for a minute. Don't talk about  
14 the case and do not allow it to be discussed in  
15 your presence. We'll be in recess.

16 (4:50 P.M. Recess)

17 (5:07 P.M. Jury present)

18 THE COURT: Thank you, ladies and gentlemen.  
19 You may be seated. Had you finished your  
20 examination?

21 MR. O'DELL: I believe I had, Judge, and we  
22 took a break and I had one additional question  
23 that came to me while you were at break.

24 THE COURT: All right, go ahead.

25 DIRECT EXAMINATION RESUMED

1 BY MR. O'DELL:

2 Q Mr. Rector, do you recall an occasion when Mr.  
3 Smith came to the lab?

4 A Yes.

5 Q Do you recall opening these items of evidence to  
6 enable him to photograph them?

7 A Yes.

8 THE COURT: Which Mr. Smith?

9 MR. O'DELL: Danny Smith, I'm sorry,  
10 Investigator Smith.

11 Q Did he, in fact, photograph them and you re-sealed  
12 them?

13 A Yes.

14 MR. O'DELL: I believe that's all.

15 MR. SMITH: Judge, I have no questions of Mr.  
16 Rector.

17 THE COURT: Thank you very much, sir, you may  
18 come down.

19 MR. O'DELL: In that case, Judge, we would now  
20 move to offer those items that have not  
21 been admitted into evidence.

22 THE COURT: Exhibits 29, 30, 31, 31A, 31B,  
23 31C, 32 and 33 are admitted.

24 (Whereupon, State's exhibits 29, 30, 31,  
25 31A, 31B, 31C, 32, 33 admitted into

evidence at this time)

MR. O'DELL: Thank you, Judge. We ask that Mr. Rector be excused.

THE COURT: You are excused. Thank you very much for being here.

CURTIS MASSEY

Being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. O'DELL:

Q State your name, please, sir.

A Curtis Massey.

Q And, Mr. Massey, where do you live?

A In Fort Payne.

Q And where do you work, please, sir?

A The Fort Payne Police Department.

Q In what capacity?

A I'm an investigator.

Q How long have you been employed by the Fort Payne Police Department?

A Approximately 12 years.

Q In addition to being an investigator, do you serve another function or another role in that department?

A Yes, I do. On the tactical unit.

Q I'll ask you with reference to your participation



1 with the tactical unit if you had an occasion to  
2 be in Cherokee County, Alabama, on March the 6th,  
3 1998?

4 A Yes.

5 Q If you would, tell these ladies and gentlemen what  
6 that involvement was, please.

7 A To attempt to apprehend a person.

8 Q Was that at a location at Highway 68/48?

9 A Yes, it was.

10 Q Tell us, if you would, when you received a call,  
11 if you recall, and how long you stayed at the  
12 scene.

13 A I do not recall what time I received the call. I  
14 stayed until it was over.

15 Q All right. We had testimony from a dog handler,  
16 Mr. Holladay, that tactical SWAT units from Fort  
17 Payne assisted him in the apprehension of Mr.  
18 Gavin. Were you a part of that group?

19 A Yes, sir.

20 Q Were you a part -- were you with, physically with,  
21 Mr. Holladay at or about the time Mr. Gavin was,  
22 in fact, seized?

23 A Yes, sir.

24 Q If you would, tell these ladies and gentlemen what  
25 that involved, please, and what you observed.

1 A I was with the dog team, a track was found by a  
2 dog and the suspect or a person was seen in the  
3 creek and I assisted the dog handler in  
4 handcuffing the subject.

5 Q All right. After the suspect was handcuffed, what  
6 was done with him, please?

7 A The suspect was -- or the subject was walked up  
8 the creek and then walked up an embankment.

9 Q And how far did you accompany this individual,  
10 please?

11 A I assisted in pushing the subject up the  
12 embankment to another person.

13 Q All right. And during the time that you were with  
14 Mr. Holladay from prior to the, to his  
15 apprehension, to the apprehension of Mr. Gavin and  
16 to your turning this suspect over to the next  
17 person, did you have any conversation with Mr.  
18 Gavin?

19 A Yes, sir, I did. I told him to stand up and walk,  
20 and that was all.

21 Q Did you or anybody in your presence discuss the  
22 circumstances of Mr. Clayton's shooting or the  
23 fact that this suspect was believed to be armed?

24 A No.

25 Q Did you, in fact, have any, other than what you've

1 just said, was there any other discussion or any  
2 questioning of Mr. Gavin?

3 A No.

4 Q Did you or any members of the team that was there  
5 in that location, did you have any conversation  
6 amongst yourselves in the earshot of Mr. Gavin  
7 concerning a weapon or the shooting of an  
8 individual?

9 A No.

10 Q All right. And I believe you testified that you,  
11 you pushed him up to the next level, to the next  
12 individual; is that correct?

13 A Yes.

14 MR. O'DELL: I believe that's all. Your  
15 witness.

16 CROSS EXAMINATION

17 BY MR. SMITH:

18 Q Mr. Massey, my name is Bayne Smith, I'm Mr.  
19 Gavin's attorney?

20 A Yes, sir.

21 Q How long were you on the scene that evening before  
22 Mr. Gavin was arrested?

23 A I don't know.

24 Q I mean, had you just arrived on the scene or had  
25 you been there assisting in the hunt for a period

1 of time?

2 A I had been there.

3 Q Do you recall?

4 A I don't recall how long.

5 Q More than an hour?

6 A I would say more than an hour, yes, sir.

7 Q More than an hour. When you arrived on the scene,  
8 how many officers were in the area, roughly?

9 A I don't know. I don't know.

10 Q How many officers were within your immediate  
11 eyesight at the time that you arrested Mr. Gavin?

12 A Immediate eyesight?

13 Q Yes, sir.

14 A At the time I assisted in arresting Mr. Gavin.

15 Q Yes, sir.

16 A There was only me and the dog handler that I saw.

17 Q Well, how did you get there?

18 A Through the woods with the dog team.

19 Q How did you arrive at the site? I mean, you came  
20 in a police car, did you not?

21 A Yes, I did.

22 Q Did you come with anyone else?

23 A No, I was by myself.

24 Q And you don't recall how long you'd been there?

25 A No, I don't.

1 Q And you don't have any idea how many other  
2 officers were in the immediate area?

3 A There was several, but I'm not sure how many.

4 Q Okay, several officers. Where were they? In  
5 fact, there is a diagram right behind you there if  
6 you could sort of tell us. Tell us, when you  
7 arrived at the scene, where did you arrive and how  
8 did you come on the scene?

9 A I arrived on the Dogtown road, but I don't know  
10 any kind of road number.

11 Q Okay, well, I don't know Dogtown road, either, but  
12 this is highway, we been told this is Highway  
13 68?

14 A Yes, sir.

15 Q And that would be from, that's Leesburg, and  
16 that's the direction going towards Collinsville,  
17 and this is Highway 48 and we heard differing  
18 testimony, but one of those is 48 and one is  
19 perhaps another unnamed road. (Indicating) When  
20 you arrived in the area, can you tell us where you  
21 parked your car and got out?

22 A Dogtown road is on this side, on the right-hand  
23 side.

24 Q How far away is that?

25 A I don't know.

1 MR. SMITH: I have no further questions of Mr.  
2 Massey.

3 THE COURT: Anything else?

4 MR. O'DELL: No, sir. Ask that he be excused.

5 THE COURT: Thank you very much, Mr. Massey,  
6 you may come down.

7 CHRIS GRAHAM

8 Being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. O'DELL:

11 Q Would you state your name, please, sir.

12 A Chris Graham.

13 Q And, Mr. Graham, where are you employed?

14 A I'm employed by the City of Fort Payne.

15 Q In what capacity, please?

16 A I'm a narcotics investigator assigned to the Ninth  
17 Circuit Narcotics Task Force.

18 Q The gentleman that just testified before you,  
19 Curtis Massey, testified that he was with the SWAT  
20 and tactical unit. Are you a part of that unit?

21 A Yes, sir, I am.

22 Q All right. And as part of that unit did you  
23 travel to Cherokee County or March the 6th, 1998,  
24 to try to apprehend a suspect that had run into  
25 the woods?

1 A Yes, sir.

2 Q Do you know approximately what time you arrived at  
3 the scene?

4 A I remember it was dark. My tour of duty at that  
5 time I was a canine handler, I work from 6 P.M.  
6 until 2 A.M. It was somewhere around 6 o'clock.  
7 I had just came in to work, so it was some time  
8 during that time frame.

9 Q I'll ask you if you were on the scene or at that  
10 particular site there when Mr. Gavin was  
11 apprehended by the dog handlers?

12 A Yes, sir, I was.

13 Q Where were you located?

14 A It's hard to tell by looking at the aerial shot,  
15 but to my knowledge I was somewhere right in here  
16 parked, seated in my patrol car initially.

17 (Indicating)

18 Q All right. And did you get out and go over to the  
19 corner of the woods or the edge of the woods?

20 A Yes, sir. There was a big, a very, very steep  
21 embankment that lead down to a creek and I stepped  
22 off the embankment down towards the creek.

23 Q Okay. And at some point did you observe Officer  
24 Massey and others attempting to help Mr. Gavin up  
25 or navigate the, negotiate the embankment?

1 A Yes, sir.

2 Q And did you assist in that?

3 A Yes, sir, I did.

4 Q All right. Did you or anybody in your vicinity  
5 have any conversation with Mr. Gavin at that time?

6 A No, sir.

7 Q Did you have any conversation amongst yourselves  
8 concerning the developments, the fact that a man  
9 had been shot and that this suspect may be armed?

10 A No, sir.

11 Q So there was no conversation whatsoever?

12 A No, sir.

13 Q Okay. And do you recall, were you in sight of the  
14 bank, visible from the edge of the road from where  
15 you were?

16 A Yes, sir.

17 Q Do you know Kevin Ware?

18 A Yes, sir, I do.

19 Q Did you see Kevin Ware that night?

20 A I had seen him, but at that particular time I  
21 don't remember seeing him.

22 MR. O'DELL: I believe that's all. Your  
23 witness.

24 CROSS EXAMINATION

25 BY MR. SMITH:



1 Q Mr. Graham, do you know how you arrived at the  
2 scene of the manhunt that night?

3 A In reference to?

4 Q How you physically got there.

5 A I drove my canine vehicle, patrol car.

6 Q That's a good start. How long had you been on the  
7 scene that night when Mr. Gavin was arrested?

8 A Time frame, I don't know. Awhile. It was later  
9 that night. I think I was, myself and a detective  
10 from the City of Fort Payne was the first ones to  
11 respond other than the first Cherokee officers, so  
12 we were there pretty quick.

13 Q Okay. And you remained there pretty much during  
14 the evening?

15 A Until it was over.

16 Q Did you and the other officers, if you can tell  
17 us, how did you take up position around this  
18 general area?

19 A When we initially arrived, everybody was starting  
20 to come in. Somebody had dispatched over the  
21 radio to set a perimeter around, there was  
22 supposedly, I don't know, they described there was  
23 a road that sort of enclosed a wooded area, and  
24 they set a perimeter up to close the area off, if  
25 anybody was in there, they stayed contained in

1 that area.

2 Q Were you a part of that perimeter?

3 A Yes, sir.

4 Q And now this, of course, is only a part of that  
5 area, but I think what you're telling us is that  
6 the perimeter, from what you're saying, probably  
7 would have gone -- and this is not to scale,  
8 obviously -- but would have gone up this way  
9 somewhere and then go on around to the right and  
10 come on back; is that correct?

11 A To my knowledge.

12 Q All right. Were you a part of that perimeter?

13 A Yes, sir.

14 Q All right. Can you show us -- were you on a part  
15 that's in the photograph or were you on a part  
16 that's not in the photograph?

17 A Yes, sir, my patrol car was parked somewhere right  
18 in this area, it being this time, that's the only  
19 time I've been there, first time and last time,  
20 and I was parked right on the side of the road on  
21 the wrong side of the road facing this way.

22 (Indicating)

23 Q Uh-huh.

24 A And from where it appeared they apprehended him, I  
25 was just straight looking straight ahead from him.

1 Q Now, were you and the other officers, after you  
2 arrived, what sort of communications did you have  
3 amongst yourselves? Were you talking by radio?  
4 Were you talking face to face?

5 A Not a lot of radio traffic. We were kind of quiet  
6 just in case anybody spotted anybody, but there  
7 was some radio traffic.

8 Q All right. But as far as your face-to-face  
9 communication, how was that conducted?

10 A Just normal conversation. Nothing that I would  
11 remember that stood out other than wondering where  
12 he's at, wonder where he went.

13 Q Was there any -- During the course of that time,  
14 how far away was the furthestest officer or, I'm  
15 sorry, the closest officer from you, how far away  
16 was he?

17 A I would say maybe 50 yards at the most to my rear.  
18 There was an officer stationed at this  
19 intersection right here. (Indicating)

20 Q Uh-huh.

21 A And I was closer to this intersection. Another  
22 officer would have been back this way somewhere,  
23 and I believe there were Rainsville officers. I'm  
24 not real sure.

25 Q Uh-huh. And were you having any face-to-face

1 conversation with them as opposed to radio  
2 conversation or communication with them?

3 A At which point in time?

4 Q During the course of the evening.

5 A I don't think I ever did talk to them at all.

6 Q Were they talking to each other?

7 A I have no idea. I wasn't that close to them to  
8 overhear.

9 Q How about the officers that would have been down  
10 posted along this area here, how many officers do  
11 you think were down in this area over the course  
12 of the evening?

13 A I have no idea. I never went that far. Where I  
14 initially arrived is where I stayed most of the  
15 time.

16 Q Uh-huh. Did you ever have any idea how many  
17 officers were around the perimeter?

18 A Just about every officer in DeKalb and Cherokee  
19 County, just about.

20 MR. SMITH: All right, sir. That's all I  
21 have, thank you very much. You've been very  
22 helpful.

23 MR. O'DELL: State has nothing further, Your  
24 Honor, and ask that this witness be excused.

25 THE COURT: Thank you, sir. You may come down

1 and you are excused. Ladies and gentlemen, I  
2 think it's time for us to stop for today. I would  
3 like for us to plan to get started back at 8:30  
4 again tomorrow morning. I'm going to talk to the  
5 lawyers about that to confirm in a few minutes  
6 that that is a reasonable time for us to begin  
7 again tomorrow, but I understand the schedule  
8 worked out okay for us this morning to start at  
9 8:30, so we'll try to do that again tomorrow, and  
10 I'll talk to the lawyers. But whether I give you  
11 a different time or not, I mean, I'll tell Dorothy  
12 in a minute if there is going to be a different  
13 time, but let's plan on 8:30. I'll see you in the  
14 morning. Don't talk about the case and do not  
15 allow it to be discussed in your presence. I hope  
16 you have a good night. Good night.

17 (5:25 P.M. Jury excused for the evening)

18 THE COURT: I was just going to make sure that  
19 we're all still okay with 8:30 in the morning.

20 MR. O'DELL: Yes, sir.

21 MR. SMITH: Yes, sir.

22 THE COURT: Have you got your witness to be  
23 here?

24 MR. O'DELL: We've got everybody lined up and  
25 I expect we wouldn't take more than an hour

1 tomorrow, hour and a half at best.

2 THE COURT: Even with cross?

3 MR. O'DELL: Yes.

4 THE COURT: And if that concludes the State's  
5 case, are you going to be ready to crank up at 1  
6 or 1:15 tomorrow afternoon?

7 MR. SMITH: Yes, sir. 1:30 would be  
8 preferable. I have some witnesses coming from out  
9 of the area.

10 THE COURT: Well, let's try to make the most  
11 of the day. I would like for us to try to start  
12 about 1:15. I mean, that's only -- I'll split the  
13 difference with you, 1 to 1:30. Let's make it  
14 1:15. But for now, our plans are to start at  
15 8:30. See you then.

16 (5:27 P.M. Recess for the evening)

17 CENTRE, ALABAMA

18 NOVEMBER 5, 1999

19 (8:37 A.M. Jury not present)

20 THE COURT: I'll have the jury brought in if  
21 you're ready.

22 MR. O'DELL: I'm ready.

23 MR. SMITH: We're ready.

24 THE COURT: Okay, bring them in.

25

(8:38 A.M. Jury present)

THE COURT: Good morning, ladies and gentlemen. I saw you when you came in this morning, everybody continues to be cheerful and I thank you for that. I appreciate you being here on time each morning. Sometimes we kept you waiting a little bit, but you've never kept us waiting and I'm grateful for that, also. I believe we're ready to pick up again this morning. Is the State ready with their witness?

MR. O'DELL: Yes, sir, we are.

THE COURT: Is the defendant ready?

MR. SMITH: Yes, sir, we are.

MR. O'DELL: State would call Mr. Joseph Dooley, please.

JOE LANE DOOLEY, SR.

Being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. O'DELL:

Q Would you state your full name for the record, please, sir.

A Joe Lane Dooley, Sr.

Q Mr. Dooley, where do you live?

A I live in Meridianville, Alabama.

Q What do you do for a living, please?

1 A I am a contract driver for the Alabama Department  
2 of Forensic Science.

3 Q In that capacity, Mr. Dooley, I'll ask you if you  
4 had an occasion back on or about March the  
5 6th, 1998, to come to Cherokee County to receive a  
6 body, the body of Mr. William Clinton Clayton?

7 A Yes, sir, I did.

8 Q And from whom did you receive that body,  
9 please, sir?

10 A I received that body from the coroner.

11 Q Mr. Don Rogers?

12 A Don Rogers.

13 Q And what did you do with that body, please, sir?

14 A I transported that body to the Alabama Department  
15 of Forensic Sciences in Birmingham, Cooper Green  
16 Hospital.

17 Q Do you know who you turned it over to?

18 A Dr. Stephen Pustilnik.

19 Q Was Mr. Clayton's body in the same or  
20 substantially the same condition when you  
21 received it from Mr. Rogers as it was when you  
22 took it to Dr. Pustilnik?

23 A Yes, sir, it was.

24 MR. O'DELL: I believe that's all.

25 MR. SMITH: No questions, Judge.



1 THE COURT: Thank you very much, sir. You may  
2 come down.

3 MR. O'DELL: We ask that he be excused,  
4 please.

5 THE COURT: Absolutely, you may be excused.

6 MR. O'DELL: Judge, the State at this time  
7 would like to recall Danny Smith.

8 THE COURT: All right. You're still under  
9 oath. Thank you. Have a seat.

10 DANNY SMITH

11 Being recalled to the stand, testified as follows:

12 FURTHER RE-DIRECT EXAMINATION

13 BY MR. O'DELL:

14 Q Mr. Smith, we had some testimony yesterday from  
15 forensic or ballistics man dealing with some  
16 photographs, I believe he testified that he opened  
17 some exhibits for you to be able to photograph  
18 items; is that correct?

19 A Yes, sir, he did.

20 Q Let me you ask to examine these, we have them  
21 marked. Please take them out of the jacket, if  
22 you would. Have you look at those items, those  
23 photographs?

24 A Yes, sir, these are the items that I photographed  
25 there at the lab in Birmingham.

1 Q Okay, let's let Trina mark these and then we'll go  
2 through them.

3 A I said at the lab in Birmingham --

4 MR. O'DELL: Hold on, she's got to finish  
5 marking them.

6 Q Investigator Smith, let me take these sequentially  
7 here. We have an exhibit marked, a photograph  
8 marked as State's exhibit number 34. Let me you  
9 ask to look at that and tell us if you can  
10 identify that photograph?

11 A Yes, sir, this is a photograph that I took at the  
12 Department of Forensic Sciences in Birmingham,  
13 Rich Rector opened the evidence and allowed me to  
14 photograph. This is the projectile that was  
15 recovered, or a photo of the projectile recovered  
16 from the passenger door of the 1996 courier van.

17 Q Does that reasonably and accurately depict the  
18 projectile at the time you photographed it?

19 A Yes, sir.

20 MR. O'DELL: State would offer exhibit number  
21 34.

22 MR. SMITH: No objection.

23 THE COURT: It's admitted.

24 (Whereupon, State's exhibit number 34  
25 admitted into evidence at this time)

1 Q Let me you ask to examine State's exhibit 35.

2 A Yes, sir, this is a photograph of the two spent  
3 casings or the two shell casings that was re-  
4 covered from the street labeled as being re-  
5 covered from the street between the bank and the  
6 courthouse.

7 Q Were those photographed at the same time exhibit  
8 34 was, under the same circumstances?

9 A Same circumstances, yes, sir.

10 Q Does that photograph reasonably and accurately  
11 depict the shell casings at the time you  
12 photographed?

13 A Yes, sir.

14 MR. O'DELL: We would offer State's exhibit  
15 number 35.

16 MR. SMITH: No objection.

17 THE COURT: 35 is admitted.

18 (Whereupon, State's exhibit number 35  
19 admitted into evidence at this time)

20 Q I'll ask you now to look at what's been marked  
21 State's exhibit number 36.

22 A This is a photograph of the shell casing that was  
23 recovered by Larry Wilson on Highway 68, and it  
24 was photographed at the Birmingham lab under the  
25 same -- at the same time as the others.

1 Q And does that photograph reasonably and accurately  
2 depict the shell casing as it appeared the date  
3 you photographed it?

4 A Yes, sir, it does.

5 MR. O'DELL: State would offer exhibit number  
6 36.

7 MR. SMITH: No objection.

8 THE COURT: 36 is admitted.

9 (Whereupon, State's exhibit number 36  
10 admitted into evidence at this time)

11 Q Let me ask you also to look at State's exhibit  
12 number 37, please.

13 A This is a photograph of the .40 caliber Glock  
14 pistol with the clip positioned in the photograph  
15 or the magazine removed from it. This is also  
16 photographed at the Birmingham lab in which Rector  
17 opened it, allowed me to photograph it and  
18 re-sealed it.

19 Q Does it reasonably and accurately depict the  
20 weapon at the time you photographed it?

21 A Yes, sir, it does.

22 MR. O'DELL: We offer State's exhibit number  
23 37.

24 MR. SMITH: No objection.

25 THE COURT: 37 is admitted.

1 (Whereupon, State's exhibit number 37  
2 admitted into evidence at this time)

3 Q Let me you ask if you had an occasion to  
4 photograph an item of evidence here at the  
5 sheriff's department?

6 A Yes, sir.

7 Q Let me ask you to take a look at State's exhibit  
8 number 38 and identify that for us, please.

9 A Okay, this is a photograph that I made here at the  
10 sheriff's department. Investigator Larry Wilson  
11 had received back some of the evidence from the  
12 forensic sciences involved in this case and the  
13 toboggan was one of those items and it was  
14 photographed at the sheriff's office here in the  
15 presence of Larry Wilson.

16 Q Does this photograph reasonably and accurately  
17 depict the tarboggin at the time you took the  
18 photograph?

19 A Yes, sir, it does.

20 MR. O'DELL: We would move to admit State's  
21 exhibit number 38.

22 MR. SMITH: No objection.

23 THE COURT: 38 is admitted.

24 (Whereupon, State's exhibit number 38  
25 admitted into evidence at this time)

1 Q Danny, let me you ask if you had an occasion or if  
2 you can tell us the make and model of the van that  
3 Mr. Clayton was in the night he was killed?

4 A The Express van was a 1996 Econoline, I believe it  
5 was an F-250 series, had a Birmingham registration  
6 on it.

7 Q What model was it?

8 A 1996 Ford, Econoline, F-250.

9 Q Thank you.

10 MR. O'DELL: Give me one second, please.

11 Q Danny, let me you ask to take a look at this  
12 picture, please. Can you tell us what that is?

13 A Yes, sir, this is a photocopy of a slide or a  
14 photograph of the creek, the area where the arrest  
15 took place of Gavin.

16 Q All right, and who took that photograph, please,  
17 sir?

18 A It's one of the aerial photographs that I had  
19 taken.

20 Q Okay. Hold up this overview of that location and  
21 ask you if you can point out where that particular  
22 photograph appears on this one?

23 THE COURT: What exhibit number is that on the  
24 tripod?

25 MR. O'DELL: Exhibit 3, State's exhibit 3.

1> A Okay. Again, this is a slide which you can see  
2 the power lines, where they're crossing here on  
3 the creek, and the creek is running in this  
4 direction. So you're looking at approximately  
5 that area right there. (Indicating)

6 MR. O'DELL: Have this marked. This  
7 photograph has been marked as State's exhibit  
8 number 39. State would offer it at this time.

9 MR. SMITH: May I ask one question on voir  
10 dire briefly, Judge?

11 THE COURT: You may.

12 VOIR DIRE EXAMINATION

13 BY MR. SMITH:

14 Q Mr. Smith, can you tell us, is this photograph  
15 simply an enlargement of this photograph or is it  
16 a separately made photograph?

17 A Actually when I reduced this photograph to a slide  
18 and printed the slide out it reduced the area  
19 down. It's actually an excerpt from the original  
20 photograph. It's not a separate photograph.

21 Q That was my question. Thank you.

22 A It's just more or less extracted that part of it  
23 out.

24 MR. SMITH: No objection.

25 THE COURT: 39 is admitted.

1> (Whereupon, State's exhibit number 39  
2 admitted into evidence at this time)

3 MR. O'DELL: I believe that's all I have of  
4 this witness, Judge.

5 MR. SMITH: I just have a couple of questions  
6 of Mr. Smith.

7 FURTHER RE-CROSS EXAMINATION

8 BY MR. SMITH:

9 Q With respect to State's exhibits number 36 and 37  
10 which I believe are the pictures of the single  
11 shell casing that was recovered at the scene and  
12 also 37 is the Glock, the pistol that was re-  
13 covered, at the risk of belaboring the obvious,  
14 you said there were, I believe, two shots fired at  
15 that scene that night is your recollection and  
16 your testimony?

17 A Up on 68?

18 Q On 68, yes, sir.

19 A Yes, sir, that's correct.

20 Q And you only recovered one shell casing; is that  
21 correct?

22 A That's correct, yes, sir.

23 Q And in, I think, one of your original statements  
24 you stated that the -- when you first saw the  
25 individual that fired at you and the first shot



1' was fired at you, you identified the weapon as a  
2 revolver; is that correct?

3 A I believe I did, yes, sir.

4 Q Okay. And, again, not to belabor the obvious, but  
5 by its very nature, a Glock ejects shell casings  
6 after each shot; is that correct?

7 A If it's functioning properly, yes, sir.

8 Q And a revolver does not.

9 A No, sir, it does not, it's considered a wheel gun.

10 MR. SMITH: Yes, sir. That's all the  
11 questions I have.

12 MR. O'DELL: State has nothing further of this  
13 witness.

14 THE COURT: You may come down, sir.

15 MR. O'DELL: State would now call Barbara  
16 Genovese.

17 MR. SMITH: Judge, may we be heard outside the  
18 presence of the jury before Ms. Genovese  
19 testifies?

20 THE COURT: You may. Ladies and gentlemen, I  
21 think Dorothy has gone that direction, I'm going  
22 to send you this direction. Please do not discuss  
23 this case and please do not allow it to be  
24 discussed in your presence. Please retire.

25 (8:58 A.M. Jury excused)

1> THE COURT: Do we need to have her come in?

2 MR. SMITH: Yes, sir, I think we do.

3 THE COURT: Go ahead and have a seat.

4 MR. SMITH: I'll simply state very briefly  
5 much the same objection to Miss Genovese's  
6 testimony as we made concerning the statements  
7 that were testified to yesterday by Deputy Kevin  
8 Ware. I expect that Miss Genovese is going to be  
9 asked and that she is going to testify concerning  
10 an alleged statement made by Mr. Gavin while he  
11 was incarcerated some months after he was  
12 arrested, and we're going to make basically the  
13 same objection that we made to officer, to Deputy  
14 Ware's statements. First, the State is obviously  
15 offering them as a spontaneous admission against  
16 interest. For the record we would note it's our  
17 understanding that Mr. Gavin had long since been  
18 given his Miranda Rights and had never waived  
19 those rights. We're not suggesting that the  
20 statement that's going to be offered in this case  
21 is pursuit to any questioning, but we would note  
22 that and note that as the basis for our objection.  
23 But, more to the point, I think, it's our  
24 expectation based on the evidence, based on the  
25 statement of Miss Genovese that we've been given

that she is going to testify to a statement that was made by the accused, and the State is going to attempt to draw the inference from the statement that was allegedly made by Mr. Gavin, that it was in essence a confession to the crime in question, although it's going to be a very ambiguous statement, and it is our position that the statement that is going to be offered is so ambiguous, and especially under the circumstances in which it was offered, that is, that Mr. Gavin was incarcerated, that there was apparently some type of fracas going on at the time. But the State is going to offer the statement by Miss Genovese and the essence of the statement is going to be why are you hassling Dewayne Meeks, he didn't do anything, I did it. And we simply feel that that statement, to the extent that it is offered and to the extent that the State would have the jury infer that the statement, the alleged statement by Mr. Gavin that I did it is in any sense a confession to either of the crimes with which he is charged here today. If it is offered for that reason, it is terribly ambiguous, and to the extent that the State offers that inference, it is far more prejudicial -- that the

1 prejudicial effect with this jury far outweighs  
2 any probative effect the statement might have  
3 toward proving the State's case. And we would  
4 object for those reasons.

5 THE COURT: Tell me a little about it from the  
6 State's point of view.

7 MR. O'DELL: Your Honor, we think it's a  
8 statement that was initiated by Mr. Gavin in  
9 response to a question about wanting to go out and  
10 exercise with Mr. Meeks. And as Mr. Smith said,  
11 Mr. Gavin, essentially, I expect the witness to  
12 testify that Mr. Meeks shouldn't be here, he  
13 didn't do anything, I did it. Whether or not  
14 that's ambiguous to Mr. Bayne Smith, you know, I  
15 can't say. But I think that's an issue for the  
16 jury to decide whether or not they feel like  
17 that's a statement that is ambiguous or not. And  
18 we do want to point out that on this occasion,  
19 this particular witness, Miss Genovese, was  
20 escorting Mr. Meeks and another prisoner out to  
21 an exercise yard, and it was Mr. Gavin who called  
22 her to his cell and began the conversation, and  
23 his statement is not in response to any  
24 questioning of any nature by Miss Genovese  
25 whatsoever, and I think Mr. Smith has acknowledged

1 that.

2 THE COURT: Well, now, I guess the part of the  
3 argument that Mr. Smith made that caught my ear  
4 was I think he used the word altercation going on  
5 at the time.

6 MR. SMITH: It's my understanding that, and  
7 certainly Miss Genovese could testify as to  
8 the more particulars of what actually was going on  
9 at the time, but it's my understanding that --

10 MR. O'DELL: I think I can clear that up.  
11 According to this witness, there was an earlier  
12 time when Mr. Meeks was brought in that Mr. Gavin  
13 apparently made a pretty big ruckus and was  
14 shouting at guards and threatening guards and  
15 talking about doing bodily harm. And this  
16 statement was made, apparently in reference to an  
17 earlier, that earlier altercation, where he calls  
18 Miss Genovese over. In fact, I think he called  
19 her Bobbi, he said, Bobbi, come over here and he  
20 says can I go out and exercise with Dewayne, to  
21 which she said no, I don't believe so. And then  
22 there is some conversation about the previous  
23 altercation and he said, look, I wasn't going  
24 dumping on Dewayne, I was dumping on the guards  
25 because Dewayne shouldn't be here. So there was

1 no altercation on the date this statement was  
2 made, and my intention was not to get into this  
3 previous argument. If Mr. Smith wanted to  
4 do that, that's fine, but all she was going to  
5 testify to was he wanted to know if he could go  
6 out and exercise, to which she said no, and he  
7 said well, you know, I would like to do that or  
8 something to that effect and he said -- that's  
9 when he responded, well, Dewayne shouldn't even be  
10 here, he didn't do anything, I did it.

11 THE COURT: Well, it sounds to me -- excuse  
12 me, go ahead.

13 MR. SMITH: Well, I just, you know, to me that  
14 simply confirms my earlier understanding of the  
15 circumstances and makes the statement all the more  
16 ambiguous, and to the extent that the jury would  
17 be allowed, and I'm sure encouraged, to infer that  
18 that statement by Mr. Gavin was in essence a  
19 confession to either of the crimes with which he  
20 is charged as opposed to some comment on an  
21 altercation that may have occurred at an earlier  
22 stage of the proceedings, which we don't even know  
23 exactly when it occurred, but clearly there was a  
24 prior altercation. I just think the implications  
25 of that statement and the inference that the

1 District Attorney would undoubtedly have the jury  
2 to draw, that that's a confession to the crime.  
3 Those implications and those inferences, the  
4 prejudicial effect just vastly outweighs any  
5 probative effect that the evidence might have, and  
6 for that reason we would strenuously object.

7 MR. O'DELL: Judge, State's response is that  
8 from the opening statements up to this very moment  
9 the defense has tried to place the burden for this  
10 crime on Dewayne Meeks. That's the thrust of  
11 their case, and this clearly is a situation where  
12 the statement was made that Meeks shouldn't even  
13 be here, he didn't do anything, I did it.

14 MR. SMITH: Well, we still don't know that  
15 we're referring to the crime or merely the little  
16 fracas that occurred earlier.

17 MR. O'DELL: Let me go back to this fracas.  
18 The fracas was not a fight between Mr. Meeks and  
19 Mr. Gavin, it was a situation where Mr. Gavin was  
20 screaming at jail employees. He was shouting at  
21 them and banging on the bars. It had nothing to  
22 do with Mr. Meeks at the time.

23 MR. SMITH: Mr. Gavin may well have been  
24 referencing his frustration expressed at the guard  
25 as opposed to saying Mr. Meeks didn't do anything

1' with the guard, I did it. It's unclear, it would  
2 be terribly unfair to allow the statement.

3 THE COURT: Well, it doesn't sound to me like  
4 the guard on the occasion when this statement was  
5 made was causing Mr. Meeks any problem.

6 MR. O'DELL: That's correct.

7 THE COURT: So if your argument is that this  
8 remark was made by Mr. Gavin to sort of take up  
9 for Mr. Meeks, it doesn't sound like the guards  
10 were -- there is no evidence they were giving him  
11 any problem at the time, other than the fact that  
12 they had him in custody.

13 MR. SMITH: That may well be the case, Judge,  
14 and even if that is the case, I still would assert  
15 that a statement that, I did it, in the context  
16 which occurred months after the arrest and during  
17 which Mr. Gavin and Mr. Meeks were both  
18 incarcerated is simply too ambiguous, and the  
19 inference that the jury would be permitted to draw  
20 from that, and as I say, even encouraged by the  
21 D.A. to draw from that is simply too prejudicial  
22 and has little, if any, probative value to prove  
23 an admission against interest with respect to the  
24 offenses charged, and we just would strongly urge  
25 that the Court should exclude this testimony.



1 THE COURT: I believe that that is a matter  
2 for the jury to determine from the evidence. It's  
3 a question of weight rather than admissibility,  
4 and I'm going to allow the witness to testify and  
5 you're free to cross-examine her with respect to  
6 what "it" was referring to. So, I'll allow her to  
7 testify.

8 (9:09 A.M. Jury present)

9 THE COURT: Thank you very much. You may be  
10 seated, please.

11 BARBARA GENOVESE

12 Being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. O'DELL:

15 Q State your name, please, ma'am.

16 A Barbara Genovese.

17 Q Let me ask you where you reside, please, ma'am.

18 A In Cedar Bluff.

19 Q And I notice you have a uniform on. How are you  
20 employed?

21 A I'm a supervisor of corrections at the detention  
22 center.

23 Q Here in Cherokee County?

24 A Yes.

25 Q Just so I understand we're talking about the

1 Cherokee County Jail.

2 A Yes.

3 Q And how long have you supervised activities over  
4 there, please, ma'am?

5 A Be four years in April.

6 Q Okay. And you were so supervising and in charge  
7 of jail activities back in April of 1998?

8 A Yes.

9 Q Let me ask you this, Ms. Genovese. As a result of  
10 your supervision, did you have occasion to have  
11 Mr. Keith Gavin in your facility?

12 A Yes.

13 Q Incarcerated in your facility?

14 A Yes.

15 Q And simultaneously, did you have an occasion to  
16 have Mr. Dewayne Meeks incarcerated in your  
17 facility?

18 A Yes.

19 Q Were they in the same cell or separate cells?

20 A Separate cells.

21 Q I'll ask you if you recall an occasion during  
22 the time when both were incarcerated in your  
23 facility, if you recall being summonsed to Mr.  
24 Gavin's cell?

25 A Yes.

1> Q What were the circumstances of that, please, ma'am?

2 A I had went and got Dewayne Meeks out of his cell  
3 which was 204, it was on the right side of the  
4 jail, upstairs on the cat walk. I had gotten  
5 Dewayne, brought him down to Tim Hudgins' cell,  
6 which is another person that was incarcerated for  
7 the same type of offense. When I had opened up  
8 the door to let Tim out, Keith had called me to  
9 his cell which was 201.

10 Q All right. And what exactly do you recall -- how  
11 did he get your attention, please?

12 A Called me Bobbi.

13 Q And asked to you come over to his cell?

14 A Yes.

15 Q Okay. And when you got to his cell, what, if  
16 anything, did he ask you, please, ma'am?

17 A He asked me could he come out in the exercise area  
18 with Dewayne and Tim.

19 Q Okay, and what did you respond to him, please?

20 A I said no. And he asked me why or -- and then at  
21 that time when he asked me why, I said because of  
22 the screaming and yelling and banging on the doors  
23 when Dewayne was initially brought to jail.

24 Q All right. And after you told him that you would  
25 not allow them to exercise with one another, what

1' did he say?

2 A He wanted to know if there was any way, you know,  
3 that I would speak to somebody, and I told him  
4 that I would. And he said, well, he said, Dewayne  
5 didn't do anything. He said I did it. He said  
6 Dewayne should not be in here, he should not be  
7 locked down, and he was referring to the, I guess  
8 the way he was --

9 MR. SMITH: Object to what he was referring  
10 to, Judge.

11 A He said he shouldn't be locked down.

12 MR. O'DELL: I believe that's all.

13 CROSS EXAMINATION

14 BY MR. SMITH:

15 Q Miss Genovese, no other officer, law enforcement  
16 officer or sheriff's deputy overheard this  
17 conversation that you heard that you've testified  
18 to here today; is that correct?

19 A That's correct.

20 Q And you, in fact, don't know what Keith was  
21 referring to when he said I did it; isn't that  
22 true?

23 A That's true.

24 MR. SMITH: That's all I have.

25 MR. O'DELL: That's all we have of this

1 witness.

2 THE COURT: Thank you very much. You may come  
3 down.

4 MR. O'DELL: I think I got this right, Severia  
5 Morris.

6 SEVERIA MORRIS

7 Being duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. O'DELL:

10 Q State your name, please, ma'am.

11 A Severia Morris.

12 Q And, Ms. Morris, where are you from?

13 A I'm from Chicago, Illinois.

14 Q And how long have you lived in Chicago?

15 A I lived in Chicago since 1967.

16 Q Where did you live before you moved to Chicago?

17 A Mobile, Alabama.

18 Q So you're a hometown girl?

19 A Yes, I am.

20 Q Just transplanted. Let me ask you what you do for  
21 a living?

22 A I am employed with the Illinois Department of  
23 Corrections for the past 31 years and I'm a parole  
24 supervisor.

25 Q And as a parole supervisor, do you supervise other

1' parole officers and also supervise parolees.

2 A Yes, I do.

3 Q I'll ask you in that capacity if you have  
4 knowledge of or have supervised one parolee by the  
5 name of Keith Gavin?

6 A Yes, I have.

7 Q Could you tell us what your records indicate about  
8 Mr. Gavin, what that conviction was, please, ma'am?

9 A That conviction was held in Cook County, Chicago,  
10 Illinois. He was charged with murdering and  
11 intent to kill with injury, and sentenced on 7-8  
12 of '82.

13 Q Okay. Do you have a photograph in your file of  
14 Mr. Gavin?

15 A Yes, sir, I do.

16 Q Okay. Would you produce that for us, please.

17 MR. O'DELL: Judge, we would offer State's  
18 exhibit number 40.

19 MR. SMITH: Judge, we would object to the  
20 relevance of that document or that picture. I  
21 don't know what it adds to the State's  
22 presentation.

23 MR. O'DELL: Judge, Count Two charges murder  
24 within the last 20 years, and we have to prove  
25 beyond a reasonable doubt to this jury that that

1' is, in fact, the same Keith Gavin we have the  
2 conviction for.

3 MR. SMITH: Ms. Morris is here, and if she  
4 wants to identify Keith as her parolee, she can do  
5 that. I would object to that photograph coming in  
6 for any reason.

7 THE COURT: 40 is admitted.

8 (Whereupon, State's exhibit number 40  
9 admitted into evidence at this time)

10 Q In light of that statement by defense counsel, Ms.  
11 Morris, is Mr. Keith Gavin the gentleman involved,  
12 convicted in June 9th, 1982, and sentenced on July  
13 8th, 1982, for murder in Cook County, Illinois, in  
14 the courtroom today?

15 A Yes, sir, he is.

16 Q Would you please point him out for the jury.

17 A That's the gentleman, yes, sir. (Indicating)

18 MR. O'DELL: Let the record reflect that she's  
19 pointed out Mr. Keith Gavin.

20 Q One other question. The case number we have is  
21 812719. Do your records reflect a case number?

22 A Yes, sir, it does.

23 Q Is that the same case number?

24 A Yes, it is.

25 MR. O'DELL: I believe that's all.

1' MR. SMITH: No questions.

2 THE COURT: You may come down, ma'am. Thank  
3 you very much.

4 MR. O'DELL: Judge, we thank Ms. Morris for  
5 traveling down and ask she be excused so she can  
6 go back to Chicago.

7 THE COURT: You're excused, Ms. Morris. Thank  
8 you.

9 MS. MORRIS: Thank you.

10 MR. O'DELL: Judge, the State would call Mrs.  
11 Elizabeth Clayton.

12 ELIZABETH MAYOLA CLAYTON

13 Being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. O'DELL:

16 Q Would you state your full name for the record,  
17 please, ma'am.

18 A Elizabeth Mayola Clayton.

19 Q Mrs. Clayton, where do you live?

20 A In Birmingham.

21 Q And let me ask you, please, up front, were you  
22 related to William Clinton Clayton?

23 A Yes, I was. I am.

24 Q How so, please, ma'am?

25 A I'm his wife.



1 Q And how long were you married?

2 A 37, nearly 38 years.

3 Q I'll ask you if you have a photograph? Did we ask  
4 you to bring a photograph of Mr. Clayton?

5 A Yes, you did.

6 Q Could you produce that for us. For the record,  
7 please, Mrs. Clayton, could you identify the  
8 person in that photograph?

9 A That's my husband, Bill Clayton.

10 Q Does that reasonably and accurately depict how  
11 your husband looked on the date of that  
12 photograph?

13 A I would say so, yes, sir.

14 MR. O'DELL: State would offer exhibit number  
15 41.

16 MR. SMITH: No objection.

17 THE COURT: 41 is admitted.

18 (Whereupon, State's exhibit number 41  
19 admitted into evidence at this time)

20 Q Mrs. Clayton, I have one final question for you.  
21 Your husband was killed here in Centre, March the  
22 6th, 1998. Do you know why your husband was in  
23 Centre at 6:40 on that night?

24 A He was going by Regions Bank to get some money out  
25 of the ATM to take me out to dinner. On the

1 weekends we ate out some.

2 Q Let me ask you one more question. The last time  
3 you saw your husband alive was on what date, please,  
4 ma'am?

5 A At breakfast that morning.

6 Q And the next time you saw your husband was when?

7 A Was in the funeral home.

8 MR. O'DELL: I believe that's all. Your  
9 witness, Mr. Smith.

10 MR. SMITH: We have no questions, Judge.

11 THE COURT: Thank you, ma'am, you may come down.

12 MR. O'DELL: Your Honor, with the testimony of  
13 Mrs. Clayton, the State rests.

14 THE COURT: Ladies and gentlemen, I'm going to  
15 ask you to retire to the jury room for a few  
16 minutes and I'm going to take up some matters with  
17 the attorneys before I tell you what our schedule  
18 is going to be hereafter, so let me confer with  
19 them for a few minutes and I'll report to you  
20 shortly. Please do not discuss the case and do  
21 not allow it to be discussed in your presence.  
22 You may retire.

23 (9:17 A.M. Jury excused)

24 THE COURT: I indicated yesterday that if we  
25 were able to finish this morning, I would not

1 expect the defendant to call any witnesses until  
2 after lunch today, but I just want to confirm with  
3 you that you will be ready to proceed after lunch  
4 today.

5 MR. SMITH: Yes, sir.

6 THE COURT: And my hope is that we can start  
7 about 1:15, does that still seem a reasonable  
8 target for you?

9 MR. SMITH: Yes, sir.

10 THE COURT: Are there any matters that we need  
11 to take up this morning before we adjourn and give  
12 you that break? Any issues or matters that need  
13 to be discussed at this time?

14 MR. SMITH: We would expect to move for a  
15 dismissal of the indictments and all the counts  
16 thereunder on the grounds the State has not met  
17 its burden of having proved a prima facie case of  
18 those indictments. We can take that up now or  
19 after lunch.

20 THE COURT: I would be pleased for you to make  
21 such a motion now.

22 MR. SMITH: Yes, sir. We would so move for a  
23 dismissal of the indictments and all counts under  
24 indictment on the grounds the State has failed to  
25 prove a prima facie case as to each one.

1 THE COURT: That motion is overruled. Any  
2 other motions?

3 MR. SMITH: No, sir.

4 THE COURT: I would like for us to make an  
5 inventory, I would like for you to not leave until  
6 we've made sure all the exhibits are here before  
7 we take this recess.

8 MR. O'DELL: I think we did that yesterday  
9 afternoon, didn't we? We'll do it again, but we  
10 did that yesterday just to be sure it was.

11 THE COURT: There have been a few more added  
12 this morning, so let's make sure we have them all  
13 here. There are a few pieces back here that have  
14 not been offered and they have not been exhibited  
15 or displayed. I would like for those to be  
16 removed so that we don't mistakenly or accidentally  
17 get them shuffled in with the others. And before  
18 we all go our separate ways, I guess I would like  
19 to talk to you just, again, informally in my  
20 office about our schedule. We're here on Friday  
21 and going to start this afternoon and continue  
22 into tomorrow, but let's meet informally with a  
23 cup of coffee for a few minutes and talk about our  
24 schedule for the next few days. And one of the  
25 things that I want to talk to you about, I think,

1 is Sunday. And I would not -- it is my position I  
2 would not require us to go to court, to be in  
3 court on Sunday if there was any objection from  
4 anybody involved in the case, jurors, witnesses,  
5 parties, lawyers, clerks. That does not  
6 include court reporters. But that is something I  
7 want to talk to you about.

8 (Recess)

9 (9:44 A.M. Jury present)

10 THE COURT: Please be seated, thank you.  
11 Ladies and gentlemen, you know, these cases, this  
12 one and any other case, can be somewhat difficult  
13 to administer from a scheduling standpoint.  
14 Witnesses have to be here at certain intervals and  
15 certain times and so forth and it's often  
16 difficult to arrange a case and administer a case.  
17 The lawyers work hard to do that and the Court is  
18 involved in some of that and we just have to all  
19 work together to try to make sure things flow  
20 evenly and easily for everybody's benefit. I have  
21 decided that what I'm going to do is not require  
22 Mr. Smith and his team to have their witnesses  
23 here until after lunch today. So, that means that  
24 we're going to be in recess until after lunch.  
25 Now, I realize that that's some inconvenience for

1 THE COURT: And there being none, has any  
2 member of the jury seen any news accounts or read  
3 any news reports of this case in violation of my  
4 instructions to you?

5 (No audible response)

6 THE COURT: There being none, we will be in  
7 recess until 1:15. Thank you very much.

8 (9:47 A.M. Jury excused.

9 THE COURT: We stand adjourned.

10 (Recess)

11 (1:56 P.M. Jury not present)

12 THE COURT: Bayne, are y'all about ready?

13 MR. SMITH: We're ready, Judge.

14 THE COURT: All right.

15 (2:00 P.M. Jury present)

16 THE COURT: After you all left we got worried.  
17 We remembered that Dorothy would be leading the  
18 way and you might end up in Atlanta. When you  
19 didn't get back quite at 1 or 1:15, we knew you  
20 were in Atlanta. I hope you had a nice leisurely  
21 lunch and thank you so much for your patience. Is  
22 the defendant ready with the first witness?

23 MR. SMITH: Defendant is ready, Your Honor.

24 THE COURT: You may call your first witness,  
25 please, sir.

1 MR. UFFORD: Dr. Klimasewski.

2 THE COURT: Come around, please, sir.

3 DR. TED KLIMASEWSKI

4 Being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. UFFORD:

7 Q Would you state your name again, please.

8 A It's Ted Klimasewski, but you can say Dr. K.

9 Q Do you not use the Klimasewski?

10 A Not too often, yeah. I teach at the university,  
11 so to make it easier for the students we say Dr.  
12 K.

13 Q That is the name you use, then?

14 A Yes.

15 Q Then I'll call you Dr. K. Dr. K, you say you work  
16 at the university. What is your field of  
17 expertise?

18 A I am a full professor at Jacksonville State  
19 University and Climatology is my expertise as well  
20 as T.V. meteorology.

21 Q Climatology, now, what does that entail?

22 A Climatology is looking at weather data or weather  
23 information over long periods of time rather -- a  
24 meteorologist would look at information today to  
25 try to figure out what was going to happen for

1' tomorrow, for example.

2 Q Do you also do that type of work?

3 A Yes, I do weekend weather at Fox 6 in Birmingham.

4 Q And meteorologist work is very closely related to  
5 climatological work of a climatologist; is that  
6 correct?

7 A Yes, they're both essentially the same.

8 Q So you've had experience as a meteorologist, also?

9 A Yes.

10 Q What do you teach at JSU?

11 A At Jacksonville State University I teach  
12 meteorology and climatology, the courses that deal  
13 with the weather.

14 Q Okay. And you also work as a meteorologist for a  
15 television station; is that correct?

16 A Yes.

17 Q Okay. And how long have you done that?

18 A Well, this one at Fox 6, I started doing this  
19 since April. I used to work at T.V. 40 at  
20 Anniston, Alabama, for 12 years doing that.

21 Q Prior to the Fox 6?

22 A Yes.

23 Q Okay. And did you work before that as a  
24 meteorologist?

25 A There were a couple of one episode in Huntsville



1' for a short period of time, and Birmingham back in  
2 1990, also.

3 Q Okay. How long have you worked as a professor of  
4 climatology?

5 A 25 years.

6 Q All right. And where did you receive your  
7 Bachelor's Degree?

8 A At Central Connecticut State University.

9 Q And your Master's Degree?

10 A At Peabody College at Vanderbilt University.

11 Q And your Ph.D?

12 A At the University of Tennessee.

13 Q Was that in 1974?

14 A Yes. Yes.

15 Q Okay. And what's your title at Jacksonville  
16 State?

17 A Full Professor.

18 Q Okay. Dr. K, I'm going to ask you some questions  
19 regarding temperature, temperature on a certain  
20 day in 1998. Would you -- Would that be within  
21 your field of expertise, within your field of  
22 studies, what you teach, what you do, what you  
23 research, those kind of things?

24 A Yes.

25 Q Okay. Is there a place where you gather

1' scientific data that shows weather conditions?

2 A Yes. NOAA at -- the National Weather Service is  
3 part of NOAA, and we get our information from the  
4 National Weather Service.

5 Q Okay. You get your data from the National Weather  
6 Service, and I'm going to show you a document and  
7 I'm going to ask you to tell us if that document  
8 is a regular official document that you use in  
9 your profession for the purposes of your  
10 profession and professions?

11 A Yes.

12 Q Okay. In that regard, I would like to ask you on  
13 the evening of March 6th of 1998, could you tell  
14 me what the time sunset was?

15 A The time of sunset is 5:45 according to this  
16 climatological data for the month of March.

17 Q And that climatological data is what you use when  
18 you study weather, when you report about weather  
19 and that kind of thing; is that correct?

20 A Yes.

21 Q 5:45 P.M. would be sunset. Now, in the course of  
22 your studies and regarding weather and those  
23 things, is it part of that that you determine  
24 daylight and dark conditions?

25 A Yes. Yes.

1 Q Okay. This time of year, March 6, 1998, if the  
2 sun goes down at 5:45, what time does it get dark?

3 A You could bet on a dark moment probably at 6  
4 o'clock would be a safe time to say that it's  
5 dark.

6 Q Okay. On the evening of March 6th of 1998,  
7 obviously after 6:45, 6:40, 6:35, would it be  
8 dark?

9 A Yes.

10 Q Okay. What was the temperature that night, that  
11 evening?

12 A Okay, temperature information comes from, one  
13 source of information, the climatical data for  
14 March and...

15 Q Do you have something that would refresh your  
16 memory regarding that?

17 A Yes, that piece of paper would.

18 Q I'm showing you this piece of paper which you are  
19 using to refresh your memory, and I'm going to ask  
20 you if at one point you knew this without the  
21 refreshing of your memory, but you're using that  
22 now?

23 A Yes, yes, because there is information on this  
24 sheet of paper from March 1st until March 8th.

25 Q Okay. March 1st through March 8th, 1998?

1 A Right.

2 Q Okay. Not so much concerned about March 8th, but  
3 I might be concerned about March 6th and March  
4 7th, but not March 8th; do you understand?

5 A Yes.

6 Q I guess that would be, March 7th would be the end  
7 of a week; is that --

8 A Yes.

9 Q -- of a seven-day period. Actually it begins  
10 March 1st, so I'm not really interested in March  
11 8th with my questions today. I would just ask  
12 you, then, again regarding the evening of March  
13 6th after 6:50 P.M., 6:53, 6:50 P.M. to 7 o'clock  
14 -- I mean to 10 o'clock that evening, what would  
15 have been the range of the temperature that  
16 evening?

17 A From looking at the data that I have here, I would  
18 suspect that the temperature at that time would be  
19 between 47, possibly 48, 49 degrees.

20 Q Between 47 to 49.

21 A Yes.

22 Q Okay. For the time prior to that, March 1st  
23 through that evening, was there anything unusual  
24 about the weather pattern for that week? Was  
25 there anything remarkable as far as the weather in

1' this part of Alabama?

2 A Probably if you look at that week and then you  
3 compare it to all the records that have been  
4 established, say high record and low temperature  
5 records, you could suspect this was very typical  
6 of March. There is some fluctuation of  
7 temperatures during the week.

8 Q But not unusual?

9 A There is no record lows, there is no record highs.

10 Q Okay. What about the morning, what were the  
11 morning lows on the period prior to March 6th,  
12 1998? If you would just tell me, if you could, by  
13 the dates.

14 A Okay, the low morning temperatures?

15 Q Yes.

16 A The minimum temperatures, there were on the 2nd,  
17 3rd, 4th and 5th temperatures that were below  
18 freezing or near to freezing. So temperatures  
19 went from 30, 33, 30 and 29 degrees. On the 5th  
20 it was 29 degrees in the morning.

21 Q So the day before.

22 A Yes.

23 Q It was 29 degrees in the morning. Now, regarding  
24 the weather patterns that you saw there, which you  
25 have stated there, would there be any reason to

1 think that water temperatures would be any higher  
2 than normal on March the 6th, 1998?

3 A No, because the morning temperatures were below  
4 normal between the 2nd and the 5th, and also  
5 afternoon temperatures were essentially below  
6 normal from the 2nd to the 5th, also, even on the  
7 6th they were below normal on the afternoon.

8 Q Okay. Dr. K, I've been discussing the weather.  
9 In talking about the weather, we're talking about  
10 the weather around here. You've been giving us  
11 this information, I think the jury may understand  
12 we're talking about the weather around here, but  
13 is that the weather conditions that you're  
14 referring to here in Cherokee County towards  
15 Collinsville from here, between here and  
16 Collinsville, is that where you determined these  
17 weather conditions to exist?

18 A The weather data itself comes from Gadsden, from  
19 the airport in Gadsden. So the data itself is  
20 from Gadsden. However, since we don't have  
21 weather gauges and temperature gauges everywhere  
22 and in every neighborhood, we have to figure out  
23 what's happening in one place and assume that it's  
24 happening in another place. We call that  
25 interpolation.

1' Q And that interpolation, when you say we call it,  
2 when you refer to we, would that be your  
3 colleagues in the profession?

4 A Yes. Yes.

5 Q And in the professions that you deal, that is  
6 standard practice; is that correct?

7 A Yes.

8 MR. UFFORD: Nothing further.

9 MR. O'DELL: Just one question.

10 CROSS EXAMINATION

11 BY MR. O'DELL:

12 Q Doctor, I believe you told Mr. Ufford that you  
13 make an assumption that that's what the  
14 temperatures would be in this location; is that  
15 correct?

16 A Yes.

17 Q So by interpolation you're making a guess, but you  
18 have no way of knowing how cold or how hot it was  
19 at that location on that night, do you?

20 A We know what the temperatures are in a number of  
21 locations in this area, and then what we  
22 anticipate is that if the temperatures are this  
23 degrees in all these other locations, then it must  
24 be that temperature at that particular spot.

25 Q You say it must be?

1> A Oh, it's interpolated that's what it is, yes, sir.

2 Q But you don't know for sure, do you?

3 A We don't know for sure.

4 MR. O'DELL: That's all.

5 MR. UFFORD: Nothing further.

6 THE COURT: Thank you very much, sir. You may  
7 come down.

8 MR. SMITH: Judge, may we approach?

9 THE COURT: You certainly may.

10 (Sidebar conference)

11 (In open court)

12 THE COURT: Ladies and gentlemen, we're going  
13 to take a recess for just a few minutes. Please  
14 don't discuss the case or allow it to be discussed  
15 in your presence.

16 (2:17 P.M. Jury excused)

17 (2:52 P.M. Jury not present)

18 THE COURT: How are we doing? Are we ready to  
19 get started back.

20 MR. SMITH: Yes, sir.

21 THE COURT: All right, bring in the jury.

22 (2:53 P.M. Jury present)

23 THE COURT: Thank you, ladies and gentlemen.  
24 Please be seated. You may call your next witness.

25 MR. UFFORD: Mark Edward Meade.



DR. MARK EDWARD MEADE

Being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. UFFORD:

Q State your name for the court, please.

A Mark Meade.

Q Mr. Meade, what's your full name?

A Mark Edward Meade.

Q Yes, sir. How are you employed?

A I'm a Professor in the biology department at Jacksonville State University.

Q So that would mean that you're a professor. Does that mean you're a Ph.D?

A Yes, I am.

Q Okay. So that would be Dr. Meade.

A Yes.

Q Could you tell this Court if you have expertise regarding human physiology, just yes or no?

A Yes.

Q And based -- What is that expertise? What education, what knowledge, what experience, what is that based upon?

A Well, my teaching background since I was a graduate student years ago is teaching human physiology, medical physiology. I teach courses,

1 preparatory courses for students that are going to  
2 go to medical school. I've tutored from time to  
3 time UAB medical students in physiology and  
4 related disciplines.

5 Q Okay. That would be human physiology; is that  
6 correct?

7 A Yes.

8 Q Okay. Based on your area of study and your  
9 teaching art and your skills acquired thereby and  
10 knowledge acquired thereby, do you have knowledge  
11 and information regarding the affects of  
12 temperature upon the human body?

13 A Yes.

14 Q Okay. Would this include the impact of the  
15 presence of water upon or about the human body?

16 A Yes.

17 Q Is there a condition, very commonly known  
18 condition, that, a term for the condition, of the  
19 impact of water upon the temperature of the human  
20 body?

21 A Yes.

22 Q What is that term?

23 A Hypothermia.

24 Q Okay. Let me you ask, first of all, if the  
25 temperature on the outside of, on the outside, a

1 human, a person were in 48 degree, 47, 48, 49, say  
2 48 degree temperature and they stepped into water  
3 that was 55 degrees, would they notice that it was  
4 warm?

5 A Yes, immediately they would.

6 Q Would that be the initial feeling?

7 A Yes.

8 Q Okay. Would it be instantly perceived?

9 A Yes.

10 Q Okay. But, water -- Well, let me ask you what  
11 temperatures can hypothermia set in?

12 A Any temperature below body temperature.

13 Q Generally, I think it's general knowledge 98.6;  
14 is that correct?

15 A That's correct.

16 Q Thereabouts. So, let me ask you about an  
17 individual, 48 degrees outside, an individual with  
18 the general characteristics of Mr. Gavin, have you  
19 generally just taken note of his general  
20 appearance, examined him as far as size and  
21 height?

22 A Yes.

23 Q An individual such as Mr. Gavin, of that build and  
24 all, if he were submerged in water in a creek in  
25 this area, submerged in water, and the temperature

1 outside was 48 degrees thereabouts, and he were  
2 submerged in water up to his waist, what would be  
3 the affect on that individual after an hour?

4 A Very good possibility that person would be  
5 unconscious following an hour of exposure, of  
6 exposure to that kind of temperature.

7 Q What other things might the individual experience  
8 if he were not unconscious after an hour?

9 A Well, the body is going to respond by trying to  
10 maintain core body temperature, which means the  
11 extremities are going to be the first to respond  
12 or show the first effects of hypothermia. Blood  
13 is going to be shunted from the extremities, from  
14 the legs to the arms, again to the core, to try to  
15 maintain body temperature. The legs would more  
16 likely go numb. The person may experience, after  
17 prolonged exposure, actually completely lose the  
18 feelings in the extremities. They may get drowsy,  
19 lethargic, incoherent of their surroundings with  
20 prolonged exposure.

21 Q You're talking about an hour here to his waist.

22 A An hour is long enough to, again, induce  
23 unconsciousness at those sorts of temperatures.

24 Q Why is that? Why did he lose that -- You said  
25 something about not being aware of his

1' surroundings or something of that nature?

2 A Again, because the blood is cooling, the heart  
3 rate will slow, the blood flow to the brain is  
4 going to decrease and slow down. Again, leading  
5 to the lethargic state of the person, feeling of  
6 drowsiness. Person may want to fall asleep or  
7 think that they're getting tired and they want to  
8 go to sleep, again, because of the decrease blood  
9 flow, decreased heart rate, and that sort of  
10 effect.

11 Q When you say lethargic, does that mean anything  
12 regarding movement?

13 A Yes. Obviously, if someone's blood flow is  
14 decreasing to your extremities, blood slowing  
15 down, legs are going numb, the mobility of that  
16 person is going to be drastically reduced. Again,  
17 the person may feel like they're going to sleep  
18 and actually just want to stay where they are and  
19 go to sleep.

20 Q And if that person is able to be removed from that  
21 water, how long would those conditions of  
22 inability to move and as you have just described,  
23 how long would that go on?

24 A Again, based upon exposure time, again, assuming  
25 an hour, it's not going to be an immediate

response. There are emergency techniques, treatments for persons that have undergone hypothermic conditions. You don't just warm a person up and then they regained full abilities. In fact, that can cause damage to the person in the long run, potentially cause other problems. But within a person exposed an hour, temperature 50 degrees, water, it's potentially going to take an hour or several hours to recuperate from that condition. But it's not going to be instantaneous. It's not a matter of just warming that person up and then they're fine.

Q Would they have difficulty walking?

A Definitely, if -- again, their lower extremities was the part of their body that had been exposed.

Q Okay, could it be that they couldn't walk?

A Yes, that's very likely, the possibility.

Q What about if that individual were in the water for two hours?

A Prolonged exposure to --

Q I'm talking about two hours, doctor; do you understand?

A Yes.

Q From your expertise, we're talking about the same individual.

1 A Two hours, more than likely, again, the person was  
2 unconscious, but, again, at this point in time  
3 you're talking about reducing core body  
4 temperatures to the point that they could become  
5 or you could reach a lethal situation where this  
6 person could actually die from this condition.

7 Q You're talking about death after two hours, so  
8 we've gotten from a stage of lethargy, immobility,  
9 reduced mental function, to death. From that hour  
10 to that two hours does there become a point where  
11 you lose mobility completely?

12 A Yes, obviously, again, that person, the body will  
13 actually respond or the brain will be interpreting  
14 to that person that they're basically tired and  
15 they want to go to sleep, and that's basically  
16 what happens to hypothermic or in a hypothermic  
17 situation where someone becomes so cold in their  
18 bodies, their functions decrease to the point that  
19 they basically just fall asleep and die from heart  
20 stopping below a particular core body temperature.

21 Q Okay. Would you say a person would be unable to  
22 move under those conditions in this situation?

23 A Obviously, yes.

24 Q Okay. The mental function, even less? I mean --

25 A Yes.

1' Q Could you say that they may not be able to speak  
2 at that point?

3 A Yes, obviously, with decreased brain functions  
4 abilities, your ability to make coherent speech  
5 and such would be inhibited and, in fact, that is  
6 one of the, again, signs of hypothermia is the  
7 disorientation and inability to function from all  
8 standpoints, whether it's moving around or  
9 speaking or what have you in terms of mobility and  
10 functions of that person.

11 Q What about three hours?

12 A Three hours in 50 degree, 48 degree water for even  
13 the healthiest of individuals is likely to result  
14 in death of that individual.

15 Q When you say likely to result, is that --

16 A Well, I know of no cases where anybody has  
17 survived three hours exposure to 50 degree water.

18 Q Okay. That's part of your research, the types of  
19 things you do, you study the cases and the  
20 research they do and the tests they do and the  
21 research they have done and the situations where  
22 these things happened; is that correct?

23 A Yes.

24 MR. UFFORD: Just one minute, Dr. Meade.  
25 Judge, if I may.



1' Q Let me ask you regarding if this same individual  
2 were in the water up to his shoulders, maybe up to  
3 his neck, his chest area, to his chest area, after  
4 one hour temperature out, say, is 48, he's in a  
5 creek.

6 A It's a good possibility that that individual  
7 wouldn't survive an hour submerged in water  
8 temperatures of such.

9 Q To that level?

10 A To that level, that's correct.

11 Q What about two hours?

12 A Well, again, the cases that I'm aware of survival,  
13 survival is typically between one and three hours  
14 at that temperature, again, based upon the depth  
15 that you're submerged and the fitness of the  
16 person, but, again, you're looking at the  
17 likelihood that that person won't survive that  
18 length of time submerged up to their chest in 40  
19 or 50 degree water.

20 Q Okay. So it's possible death at one hour. What  
21 about two hours?

22 A Well, again, death is a possibility, but it's  
23 unlikely that they would live for that length of  
24 time in that temperature.

25 Q What would be the condition of a person that was

1 brought out of the water after an hour, between an  
2 hour to two hours, this person that we're using in  
3 our hypothetical here?

4 A Well, again, the likelihood that this person is  
5 going to be completely incoherent to their  
6 surroundings, lethargic, unable to physically get  
7 out of the water at that point in time because of  
8 the effects of hypothermia to their limbs and  
9 their over all system.

10 Q What about three hours?

11 A Again, it's unlikely they would survive that  
12 length of time, so death or the possibility of  
13 death is increased even more. But, again, it's  
14 unlikely they're going to survive that long at  
15 that temperature.

16 Q It's possible they would be dead in an hour --

17 A Yes.

18 Q -- submerged to that height. What if the water  
19 were 30 degrees?

20 A You're talking a matter of minutes, 15 minutes to  
21 half an hour, somebody could easily die to  
22 exposure. Again, depending upon the fitness of  
23 the person. But your body losses heat 25 times  
24 faster in water than it does in air, and it's just  
25 amazing at how quickly the body would decrease in

1 terms of its core temperature. Your heart shuts  
2 down when your body temperature goes below about  
3 85 degrees. So, again, the likelihood of  
4 surviving very long in 30 degree water is not very  
5 good, even for a short period of time, 15 minutes.

6 Q What if they were submerged just to their waist?

7 A At 30 degrees, again, as I mentioned for someone  
8 at 50 degrees, they're going to lose function in  
9 those limbs that are exposed to that water  
10 temperature. If it's their lower body, again,  
11 their lower limbs are going to become numb, the  
12 chance of even when bringing that person out from  
13 that condition, the changes of regaining function  
14 in those limbs is highly reduced. It may even  
15 lead to amputation or loss of limbs, complete loss  
16 of function in those sorts of temperatures.

17 Q What about two hours? Would they make it an hour?  
18 Would they make it an hour at the waist in that  
19 kind of water?

20 A They would likely be unconscious or to the point of  
21 unconsciousness and, again, based upon the  
22 individual, 30 minutes to an hour could be the  
23 maximum time they could survive. But it's likely  
24 that death will occur, there is more likelihood  
25 that death will occur at that sort of low

1> temperature.

2 Q Is this hypothermia that you're describing?

3 A Yes. Yes, all the conditions I've been speaking  
4 of are hypothermic conditions.

5 Q Let me ask you this -- these conditions that  
6 you've discussed, what about if the individual is  
7 wearing blue jeans, what if he's wearing, you  
8 know, good substantial leather shoes, he's wearing  
9 a thick cotton knit shirt, undershirt, are these  
10 conditions going to be changed significantly by  
11 the fact that he's clothed?

12 A Not significantly unless this person is wearing  
13 clothing that has been specifically designed for  
14 survival in cold water.

15 Q That would be a specialized suit that something  
16 like the Navy SEALs or something?

17 A Yes, that's correct. That's correct.

18 Q So regular clothing, are you saying would have --  
19 make little or no difference to what you just told  
20 us?

21 A Little or no effect, yes.

22 Q Okay.

23 MR. UFFORD: That's all.

24 CROSS EXAMINATION

25 BY MR. O'DELL:

1' Q Dr. Meade, let me show you the photograph, please.  
2 I believe you testified under the condition,  
3 whether it was one hour or two hours or three  
4 hours, at some point an individual who was in a  
5 creek and temperatures somewhere around 50 would  
6 become lethargic, have trouble walking, have  
7 difficulty using their limbs; is that correct?

8 A That's correct.

9 Q Would that include the ability to climb up a steep  
10 hillside?

11 A Yes, it would.

12 Q And they would require assistance?

13 A Yes.

14 Q Your testimony today is very general and I  
15 appreciate the opportunity to hear what you have  
16 to say, but, truth is, you don't know what the  
17 outside temperature was on Highway 68/48 on March  
18 6th, 1998, do you?

19 A No, I do not.

20 Q And you do not know what the water temperature was  
21 at that time, do you?

22 A No, I do not.

23 Q So what you're giving us is general information  
24 which has really no specific bearing on our  
25 circumstances as far as you know.

1 A As far as I know, that's correct.

2 Q Generally when people lose heat, where do they  
3 lose it the fastest?

4 A From the extremities, from their arms and legs.

5 Q How about through the head?

6 A Because of trying to maintain brain functions,  
7 your brain is, obviously, a major organ  
8 that's controlling functions of the rest of your  
9 body. Your body will try to conserve as much heat  
10 as it possibly can with the core of vital organs  
11 and in the brain.

12 Q Would wearing something such as a toboggan help in  
13 that respect?

14 A Yes.

15 Q Significantly, wouldn't it?

16 A Significantly, yes.

17 Q What about the impact of adrenaline on your  
18 scenario here? If somebody was greatly excited or  
19 anxious or upset?

20 A The fight or flight response that you're speaking  
21 of regarding an adrenaline rush and such would  
22 potentially affect the ability or the amount of  
23 time that someone could withstand certain  
24 temperatures. Again, it's going to vary quite a  
25 bit among individual from individual to

1 individual, so it's hard to say about one specific  
2 person, what that effect would be.

3 Q Got one other question, Dr. Meade, and maybe you  
4 might not be able to answer this, but assuming the  
5 temperature was 47 to 50 degrees in the water.

6 A Uh-huh.

7 Q Can you give us any reason why someone would want  
8 to risk their life to spend any considerable  
9 amount of time in a creek like that?

10 MR. SMITH: Object to that question, Judge.  
11 That calls for a conclusion.

12 THE COURT: Sustained.

13 MR. O'DELL: That's all.

14 MR. UFFORD: Nothing further of this witness.

15 THE COURT: Thank you very much, sir. You may  
16 come down.

17 MR. SMITH: May I go get our next witness,  
18 Judge? Be just a moment.

19 THE COURT: Yes, sir.

20 MR. SMITH: Call Mr. Pat Coffey.

21 PATRICK EARL COFFEY

22 Being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q State your name for the record, please, sir.

1 A Patrick Earl Coffey.

2 Q Where do you live, Mr. Coffey?

3 A I live in Lawrenceville, Georgia.

4 Q Where are you employed?

5 A I'm self-employed. I own a private investigation  
6 firm in Lawrenceville, Georgia.

7 Q Could you tell us briefly your professional  
8 background.

9 A I'm retired criminal investigator from the  
10 Department of the Army. I served 20 years with  
11 the Department of the Army as criminal  
12 investigator and criminal police investigator, and  
13 then once retired I became self-employed as a  
14 private investigator.

15 Q And what is the nature of your employment now, you  
16 said?

17 A I own a private investigation firm in  
18 Lawrenceville.

19 Q Lawrenceville, Georgia?

20 A Georgia.

21 Q Do you have any areas that you have, in essence,  
22 specialized knowledge as a result of your  
23 professional background and your education?

24 A I have extensive training in crime scene  
25 processing, blood splatter interpretation, and



1 collection of crime scene evidence.

2 Q Can you tell us some of the schools that you've  
3 attended to develop that information and that  
4 knowledge?

5 A I attended the basic criminal investigation  
6 course, which is 16 weeks long. I attended the  
7 scene management and examination course through  
8 the advanced detective training school, Scotland  
9 Yard. I attended the blood spatter interpretation  
10 course. I've been an instructor in the physical  
11 evidence branch for three years. I have  
12 accumulated about 3,000 hours of training in  
13 criminal investigations.

14 Q Okay. Have you ever testified in various judicial  
15 proceedings previously?

16 A Yes, I have. I've testified in federal court, in  
17 military court marshals, and state court of  
18 Georgia.

19 Q And in what capacities have you testified?

20 A Most of my testimony is as a criminal investigator  
21 for the government. I have testified twice  
22 previously as a private investigator.

23 Q And on those occasions when you have testified,  
24 have you ever testified as an expert without  
25 particular involvement in the case before the

1> Court?

2 A Yes, I have.

3 Q And how many times have you done that?

4 A Approximately seven as a criminal investigator and  
5 twice as a private investigator.

6 Q And on those occasions when you have testified  
7 both as an investigator and as an expert, on how  
8 many occasions have you testified, roughly, on  
9 behalf of the prosecution?

10 A As an expert?

11 Q Yes, sir.

12 A Seven or eight times.

13 Q Well, let me back up. I gather that most, if not  
14 all, of your opportunities to testify when you  
15 were an investigator were for the prosecution?

16 A That's correct, yes.

17 Q And how many of those would you estimate there  
18 were?

19 A Hundreds.

20 Q So now let's fast forward now to your testimony as  
21 an expert. How many times have you testified for  
22 the prosecution as an expert?

23 A Seven or eight.

24 Q And how many times for the defense?

25 A Twice.

1 Q So it would be fair to say you're not a hired gun  
2 for the defense; is that correct?

3 A That's correct.

4 Q Now, with respect to crime scene processing, you  
5 testified that two of your areas of experience are  
6 in the crime scene processing and collection of  
7 crime scene evidence fields. Does your experience  
8 specifically include processing of vehicles for  
9 forensic evidence?

10 A Yes, it does.

11 Q Would you tell the Court, roughly, how many  
12 vehicles you have processed for crime scene  
13 forensic evidence?

14 A I would estimate over, well over a hundred.

15 Q In your experience, what is the probability that a  
16 properly processed vehicle, one which had been in  
17 frequent use, would yield no usable evidence in  
18 the course of a forensic evidence investigation?

19 A I would find it very unlikely.

20 Q Why is that?

21 A Well, there is -- there is all type of evidence in  
22 a vehicle, one being latent prints. I mean, a  
23 vehicle is touched in hundreds of places,  
24 literally hundreds of places, by a perpetrator or  
25 even by just, in just normal use. It's real hard

1 to operate a vehicle without leaving your  
2 fingerprints or some type of some type of evidence  
3 that you were, in fact, in the vehicle.

4 Q If you were processing a vehicle that had been,  
5 for example, a rental vehicle, and that vehicle  
6 was being used for the first time by a particular  
7 individual, what, if anything, would you expect  
8 the find in the area of forensic or in the way of  
9 forensic evidence?

10 A Well, the first thing that I would look for would  
11 be, obviously, would be fingerprints. As I  
12 mentioned earlier, it's hard to operate a vehicle  
13 without making certain adjustments. It's  
14 certainly hard to drive a vehicle without touching  
15 the steering wheel. Most of us, when we get in a  
16 vehicle, we adjust a mirror of some sort or the  
17 seat latch in which, you know, to comfortably  
18 position ourself to operate the vehicle. Those, I  
19 would expect, and in the past have always found  
20 latent prints there. It's hard to get in and out  
21 of a vehicle without touching the door handle or  
22 closing the vehicle without touching some type of  
23 handle in there to actually close the door. I  
24 would also look for any type of fiber transfers  
25 from the subject's clothes, suspect's clothes, any

1' type of debris or anything picked up by the shoes,  
2 possibly footwear impressions on the floor mats.  
3 There is just a whole array of things that can be  
4 found in a vehicle.

5 Q Are there any areas of the vehicle you might give  
6 special attention to with the view for finding  
7 forensic evidence?

8 A Well, obviously, the passenger, I mean the  
9 driver's compartment, if you felt that the suspect  
10 had operated the vehicle, that would be my primary  
11 focus initially. But I would process the entire  
12 vehicle.

13 Q Is the -- Can you tell us the dusting method of  
14 processing a vehicle for latent fingerprints; is  
15 that the most sophisticated method?

16 A Well, in a serious case, what I personally would  
17 do would be to seal the vehicle up and process it  
18 with super glue fuming. And what that does is  
19 that locks in any type of latent prints and it  
20 makes them a lot less fragile at that point and  
21 they're easier to locate with an alternate light  
22 source. And then if you -- then you go back and  
23 you dust it to actually lift the fingerprint.  
24 That's what I would do in a case of this severity.  
25 But at a minimum, I would dust those areas that I

1 previously mentioned.

2 Q Have you had an opportunity to examine the  
3 photographs that were introduced as the State's  
4 exhibits in this case of the gun which was  
5 allegedly used which was the murder weapon in this  
6 case?

7 A Yes, I have.

8 Q What, if any, forensic evidence would you expect to  
9 find on a properly processed weapon like that?

10 A Well, I would expect at a minimum to find  
11 fingerprints on the clip, whoever loaded the clip,  
12 the rounds into the clip. I would expect to find  
13 fingerprints on the rounds inside the clip, and  
14 the slide on the top of the weapon to actually  
15 load a round into the chamber.

16 Q So you're saying, whether it's the fingerprints of  
17 the person that fired the gun that killed the  
18 victim, or whether it's the fingerprints of  
19 someone else, you would expect to find someone's  
20 prints on a gun like that?

21 A That's correct, yes.

22 Q Other than fingerprints, is there any other  
23 forensic evidence you might expect to see on a gun  
24 that had been used in a shooting at close range?

25 A At close range it's common to find what we call

high velocity back splatter of blood which is projected back towards the weapon. It's usually a very small amount, but there should be some, and sometimes even there is a phenomenon called drawback. There's been little discussion as to whether it really occurs, a vacuum actually occurs that actually draws the blood into the barrel of a weapon, but nonetheless, I would expect to find some at close range, even if it were a small amount.

MR. SMITH: Judge, I would like to have two exhibits marked at this time as defendant's exhibits. These were pictures which were provided by the State, they have not previously been marked or offered, but I believe the State will agree that they fairly and accurately depict the objects which are the subject of the pictures.

THE COURT: Have her mark them.

Q Mr. Coffey, I'm handing you what's been previously marked as defendant's exhibits 1 and 2. You have had a previous opportunity to examine those pictures, have you not?

A Yes, I have.

Q Those were photographs that were provided to us by the District Attorney's office that purport to be

1 photographs of the interior of the van where the  
2 homicide in this case took place. Now, what, if  
3 anything, do you see in those pictures which first  
4 of all would suggest the opportunity to recovery  
5 -- to recover forensic evidence from those  
6 pictures?

7 A Well, the obvious blood stains or what appears to  
8 be blood stains on the seat would definitely need  
9 to be processed. And it's hard to tell in this  
10 particular picture, but what I would look for in  
11 the smooth portion of the seat, I would look for a  
12 close examination to see if there is an actual  
13 transfer pattern of the pattern of the pants or  
14 the pattern of the shirt at the upper portion of  
15 the seat to see if that pattern may, in fact, match  
16 the fabric of the suspect. It appears that from  
17 the photograph that there was blood on the seat or  
18 the lower portion of the seat and the back of the  
19 seat and I -- what the appears to be, and I can't  
20 say for certain -- on the floor, which appears to  
21 be blood as well and, therefore, I would expect to  
22 find blood, blood stains on the shirt of the  
23 suspect, the pants of the suspect, and the lower  
24 leg, right leg and right shoe or sock of the  
25 suspect.



1 Q If an individual were to occupy the driver's side  
2 of that van for the amount of time that it would  
3 take to drive from the immediate vicinity of the  
4 courthouse here to an area approximately 10 to 15  
5 miles away, what, if any, impact would that have  
6 on any blood stains which might have been absorbed  
7 into the clothing of that individual?

8 A Well, for that length of time I would say that  
9 they would be well absorbed into the material and  
10 begin actually drying on the surface during that  
11 period of time.

12 Q Have you had occasion to during the course of your  
13 professional education do any reading on the  
14 effect of cold water on the blood absorbed into  
15 denim material?

16 A Yes, sir, there was recently an article published  
17 in the International Association of Blood Stain  
18 Analysis newsletter -- that's a mouth full --  
19 concerning denim and cold water, and there were  
20 several tests run because in this particular case  
21 there was blood where the, where they could not  
22 understand why there was blood, and several tests  
23 were done by staining the denim with blood and  
24 then actually submersing it in water. And the  
25 test revealed that the blood remained, though

1 small amounts, remained up to three hours, were  
2 still detected after submersion in water.

3 Q Based on the background that you have, the  
4 education and the reading you've been telling us  
5 about and having reviewed the photographs in this  
6 case, if an individual wearing denim jeans had  
7 been driving this van, seated in the seat which  
8 you see depicted in those two photographs, had  
9 driven that vehicle for approximately 10 to 12  
10 miles, abandoned that vehicle and was then  
11 apprehended approximately three hours later, what  
12 is the probability that a forensic examination of  
13 the most sophisticated type, including DNA, would  
14 detect the presence of blood in that clothing?

15 A I would say it would be very likely through the  
16 laboratory examination there would be some blood  
17 still left in the clothing, very likely.

18 MR. SMITH: That's all the questions that I  
19 have. Answer any questions that Mr. O'Dell might  
20 have for you.

21 CROSS EXAMINATION

22 BY MR. O'DELL:

23 Q Mr. Coffey, are you being paid for your testimony  
24 today?

25 A Yes, sir, I am.

1 Q And for the services you've provided?

2 A Yes, sir.

3 Q How much is that, please?

4 A 55 an hour.

5 Q 55 an hour, and how many hours have you put into  
6 this?

7 A Approximately eight.

8 Q Eight hours? So, in a sense you are a hired gun  
9 in response to what Mr. Smith said, you have been  
10 hired by the defense to testify today.

11 A I think we're all getting paid, sir. Yes, sir.  
12 If that's -- I'm not a hired gun, I do get paid  
13 for doing my profession.

14 Q You're being paid by the defense to do this.

15 A Yes, sir, that's correct.

16 Q And, if you would, tell me what you have spent  
17 eight hours on particularly, if you can give me  
18 categories of time that you've spent on this case  
19 of those eight hours, how you spent that time?

20 A Just reviewing photographs and reviewing the  
21 information in the case and waiting to testify.

22 Q Let me be more specific. How long have you had  
23 those photographs?

24 A Approximately two to three weeks.

25 Q And how much time did you spend examining the

1 photographs?

2 A I would say roughly an hour initially, and then  
3 reviewing them again today probably an hour.

4 Q You've testified on several different occasions  
5 with response to your conclusions that you can't  
6 say for sure or it's very likely or you would  
7 expect to find, but you're not telling these  
8 ladies and gentlemen that based on your  
9 examination of these photographs and things that  
10 you know for sure that any of these things could  
11 be found?

12 A That's correct.

13 Q If they didn't exist, if the defendant didn't  
14 leave any fingerprints, you wouldn't expect to  
15 find any, would you?

16 A I would not expect to find his fingerprints if he  
17 did not leave them.

18 Q All right. If it's a rental van and it's the dash  
19 and the steering wheel and the van is washed on a  
20 regular basis as people use it, would that have  
21 any bearing on the ability to locate fingerprints?

22 A I would say it would have some effect, but, I,  
23 it's my understanding of the case that the vehicle  
24 had been operated earlier that day.

25 Q But you would say that that would have a bearing

1 on it, wouldn't you?

2 A That would have some bearing on it, yes.

3 Q And, in fact, your assessment of the blood in the  
4 van is based on the victim not being moved; isn't  
5 that correct?

6 A I'm --

7 Q That that blood was there as a result of where the  
8 victim was shot and left?

9 A I'm not real clear on your question.

10 Q Let me rephrase my question. You did not see the  
11 body in the van that day, did you?

12 A No, I did not.

13 Q So you do not know the location of the body in  
14 that van?

15 A No.

16 Q So you're making assumptions about the blood as  
17 you see it in the photograph based solely on the  
18 photograph that you were given; is that correct?

19 A That's correct.

20 Q Now, would it have any bearing on your opinion if  
21 the body was moved and had to be transferred or  
22 transported across the driver's seat on to a back  
23 board and put in an ambulance?

24 A Would it have bearing on it?

25 Q Yes, sir, on your opinion about where blood would

1 be and how --

2 A Yes, it would have a bearing, yes, sir.

3 Q It would have a substantial bearing, wouldn't it?

4 A It would definitely have a bearing, yes.

5 Q And I know, because you don't know how much of the  
6 blood was transferred from the victim on to those  
7 seats or on to the floor mats or on to the side of  
8 the vehicle when he was removed?

9 A That's correct.

10 Q So you're giving an opinion under the best case  
11 scenario, aren't you, based on what you were told?

12 A That's correct.

13 Q And if I told you that the defendant -- I mean the  
14 victim was, in fact, removed through the driver's  
15 side and then placed on a back board, then that  
16 would have -- it could conceivably seriously  
17 challenge or change your opinion on whether or not  
18 blood could have been on him based on the scenario  
19 you were given?

20 A Based on the scenario that I'm given, I would  
21 still expect to find blood on the suspect.

22 Q I understand, and I have no problem with that, Mr.  
23 Coffey, your qualifications are excellent. But  
24 you're, you may not be deemed a scientist, but as  
25 an expert in this field, you know that your

1 assumptions or your conclusions have to be based  
2 on valid information.

3 A That's correct.

4 Q Were you told before you made your assumptions  
5 that this victim had been moved across the seat in  
6 the driver's area?

7 A I have been told that before, before I actually  
8 have testified today, yes.

9 Q Maybe five minutes or 10 minutes before you  
10 testified?

11 A Well, no, I would say at 11:30 today as I reviewed  
12 the photographs again.

13 Q Okay, but after you came to the conclusions you  
14 came to.

15 A After my initial conclusions that I sent to Mr.  
16 Smith.

17 Q Do you know -- you talked about blow black and  
18 blood splatter.

19 A Uh-huh.

20 Q Can you give us a, or let me rephrase that. Is  
21 there a difference or would you expect to see a  
22 difference in the amount or the existence of blood  
23 splatter based on the proximity of the shooter to  
24 the victim?

25 A Absolutely.

1 Q And if you were one inch away, you would certainly  
2 expect blood splatter?

3 A That's correct.

4 Q If you're a foot away, it diminishes; is that  
5 correct?

6 A That is correct, yes.

7 Q If you're as far as three feet away when you fire,  
8 the chance of blood splatter on the defendant or  
9 on the shooter are minimized extensively or  
10 greatly?

11 A Extensively, that's correct.

12 Q In this case, you don't know how far the shooter  
13 was, do you?

14 A That's correct.

15 Q So when you say you would expect to find that,  
16 again, that's under the most optimum of  
17 circumstances with a close range or close contact  
18 for firing?

19 A As it pertains to the blood splatter, yes.

20 Q Do you know with respect to the potential transfer  
21 of blood, are you familiar with wounds and how  
22 they seal up if it's muscle or tissue as opposed  
23 to just the into a fleshy part, I mean a vital  
24 organ part?

25 A Yes.



1 Q Are you aware of the fact, and is it not true,  
2 that a shot into a muscle part when the body is  
3 tended to be contorted, the muscle will close in  
4 and seal off that particular wound?

5 A You're getting into an area now that I'm not  
6 comfortable with testifying, but, yes, there are  
7 things that I've learned through death  
8 investigations about different muscles and  
9 whatever, but I'm not comfortable in testifying  
10 what a muscle is actually going to do in its  
11 sealing in.

12 Q Let me give and you hypothetical then.

13 A Okay.

14 Q Assuming this victim is shot in the hip and he's a  
15 rather large man, and he is shot in the arm with  
16 his arm tucked in and he is subsequently moved, it  
17 is possible and probably likely that the muscles  
18 would enclose that wound and gravity would then  
19 take over and he would bleed out of the lowest  
20 place, wouldn't he?

21 A That's very possible, yes.

22 Q And if that were to happen, the possibility of  
23 blood transfer is reduced greatly, isn't it?

24 A It is reduced, yes.

25 Q And is it also not reduced greatly by the kind of

1 clothing that the victim is wearing?

2 A That is correct.

3 Q Do you know what kind of clothing the victim was  
4 wearing in this case?

5 A No.

6 Q You were not told that by the defendant?

7 A No.

8 Q So you did not plug that into your calculations in  
9 arriving at your conclusions?

10 A I based my calculations on the volume of blood, or  
11 what appears to be blood, in the photographs.

12 Q Mr. Coffey, I'm not trying to give you a hard  
13 time.

14 A I understand.

15 Q I'm just trying to get to this fact, that you have  
16 testified about a great many generalities,  
17 including the blood and how long it would stay on  
18 materials in cold water.

19 A That's correct.

20 Q You don't know what the outside temperature was on  
21 Highway 68/48 on March the 6th, 1998, do you?

22 A No.

23 Q You don't know the water temperature, do you?

24 A No.

25 Q You don't know if the water was moving or still,

1 do you?

2 A No.

3 Q And, in fact, if the water was moving, it would  
4 greatly increase the possibility, if there were  
5 blood on the clothing, that it would be gone over  
6 a period of time.

7 A It would increase that, yes.

8 MR. O'DELL: I believe that's all. Thank you,  
9 sir.

10 MR. SMITH: Just a couple of follow-up  
11 questions, Mr. Coffey.

12 RE-DIRECT EXAMINATION

13 BY MR. SMITH:

14 Q Mr. O'Dell asked you about your familiarity with  
15 the effect of the closure of wounds and he  
16 described a wound from the left arm passing  
17 through the fleshy part of the arm and also a  
18 wound into the hip of the victim, and I think he  
19 asked you about the closure of those wounds. If  
20 we give you, as long as we're giving you a  
21 hypothetical, if we give you a third wound  
22 possibility, and that is a wound from that same  
23 gun that entered the left chest area or the left  
24 rib cage area of the victim, passed through two  
25 chambers of the heart and two lobes of the lung

1 and then exited on the right side, and that that  
2 body then turned to the right, would that not in  
3 your experience account for or predictably cause a  
4 substantial amount of blood to be bled into the  
5 interior of the vehicle?

6 A I would expect to find that, yes.

7 Q And in response to Mr. O'Dell's question about  
8 moving water increasing the possibility of  
9 diminishing retained blood in the clothing of a  
10 person standing in that water, is it likely that  
11 that would be, that that blood would be completely  
12 erased and eradicated under those same  
13 circumstances?

14 A I still don't think that it would be totally  
15 washed clean. I mean, it would be -- I would  
16 expect very small amounts, but still expect it to  
17 show under laboratory examination.

18 Q I have to qualify Mr. O'Dell's question here. He  
19 stated that and you acknowledged that you were  
20 being paid for your services here today; is that  
21 correct?

22 A That is correct.

23 Q But I think he also asked you if you were being  
24 paid for your testimony?

25 A No, I'm not being paid for testimony, I'm being

1 paid as he is, I'm sure, to do his job in this  
2 particular trial.

3 MR. SMITH: Thank you very much. No further  
4 questions.

5 RE-CROSS EXAMINATION

6 BY MR. O'DELL:

7 Q And yet I haven't been looking at my watch while  
8 I've been on the stand, either, have I, while I've  
9 been cross-examining you, have I?

10 A No, but you asked me how long that I had put on  
11 this and I needed my watch to answer that with a  
12 reasonable certainty.

13 Q Well, I was going to see if I found a picture that  
14 we had of the truck, Mr. Coffey, but let me ask  
15 you if, once again, you would expect a great deal  
16 of blood somewhere in the car or somewhere in the  
17 van if somebody got shot through the chest and it  
18 perforated the heart and lungs and exited; is that  
19 correct?

20 A I would expect a pretty good bit of blood, yes.

21 Q And you would expect that blood to be at the  
22 lowest place where the body would bleed, right, in  
23 terms of elevation?

24 A Well, it depends on whether the heart is still  
25 pumping at the time. If I'm leaning this way and

1 my heart is still pumping, there would still be  
2 blood coming out of a higher point.

3 Q Unless, of course, that wound was sealed off and, of  
4 course, if the clothing kept it from being released  
5 to the surface?

6 A Absolutely.

7 Q And if your body had been pushed over to where  
8 you're leaning down and your wound in your chest  
9 was lower than the seat itself, where would that  
10 blood go?

11 A To the passenger's seat.

12 Q On the floorboard?

13 A Yes.

14 Q And it would rain this way and not that way?  
15 (Indicating)

16 A Yes.

17 Q All right.

18 A If I understand your question correctly, yes.

19 Q Okay. And if you were a convicted murderer who  
20 had just shot somebody else and was fleeing the  
21 scene in the murder vehicle itself, do you think  
22 your tendency might be to be a little more  
23 cautious than the average person getting in a van  
24 and leaning up against somebody?

25 MR. SMITH: Objection, Your Honor.

1 THE COURT: Sustained.

2 MR. O'DELL: That's all.

3 FURTHER RE-DIRECT EXAMINATION

4 BY MR. SMITH:

5 Q Once again, Mr. Coffey, if an individual's heart  
6 is still pumping, I believe I heard you say that  
7 you could expect the blood to be bleeding from  
8 basically any available exit areas; is that  
9 correct?

10 A That is correct.

11 MR. SMITH: Thank you. I have no further  
12 questions, Mr. Coffey.

13 MR. O'DELL: I have nothing further.

14 MR. SMITH: Judge, we would offer defendant's  
15 exhibits 1 and 2.

16 MR. O'DELL: No objection.

17 THE COURT: 1 and 2 are admitted, and you may  
18 come down, sir. Thank you.

19 (Whereupon, defendant's exhibits 1 and 2  
20 admitted into evidence at this time)

21 MR. SMITH: May we approach, Judge?

22 (Sidebar conference)

23 (In open court)

24 THE COURT: We're going to take a recess for a  
25 few minutes, ladies and gentlemen. Please do not

1 discuss the case and do not allow it to be  
2 discussed.

3 (3:54 P.M. Jury excused)

4 (Recess)

5 (4:23 P.M. Jury not present)

6 THE COURT: Mr. Smith, what's your  
7 announcement? Have you had an opportunity to  
8 confer with your client?

9 MR. SMITH: Yes, we have, Judge. At this time  
10 the defense would state to the Court that we do  
11 not intend to call any further witnesses and it is  
12 the defenses' intention to rest at this time. I  
13 have advised Mr. Gavin of his options with respect  
14 to testifying himself and I have advised him  
15 privately of my views in that matter and he has  
16 indicated to me that he elects not to testify.

17 THE COURT: Mr. Gavin, you understand that you  
18 do have a right to testify in this case?

19 MR. GAVIN: Yes, sir.

20 THE COURT: And is it your choice not to  
21 testify?

22 MR. GAVIN: No, it's not really my choice,  
23 Your Honor, but I opt not to testify.

24 THE COURT: Well, do you understand that you  
25 have that opportunity this afternoon to testify?



1 MR. GAVIN: Yes, sir. Yes, sir.

2 THE COURT: And if you wish to testify, you  
3 may do so today.

4 MR. GAVIN: Yes, sir, I know that.

5 THE COURT: Given the opportunity to testify  
6 today, what is your choice?

7 MR. GAVIN: Under advice of my counsels, I  
8 elect not to testify.

9 THE COURT: Mr. Smith, is that a sufficient  
10 recitation for the record this afternoon?

11 MR. SMITH: I believe that it is, Judge.

12 THE COURT: Is there anything that the State  
13 would like to amend to the record for this  
14 purpose?

15 MR. O'DELL: No, sir.

16 THE COURT: I think what we should do is have  
17 the jury come in and let you rest in the presence  
18 of the jury, and once you've done that, I'm going  
19 to dismiss the jury for the night to have them  
20 come back tomorrow morning at 9 o'clock. Bring  
21 them in.

22 (4:26 P.M. Jury present)

23 THE COURT: You may be seated, thank you. Mr.  
24 Smith, what says the defendant?

25 MR. SMITH: Your Honor, the defense rests.